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Current Topics.

Joinder of Charges in Indictments.

IN A CASE on appeal from the Middlesex Sessions which came before the Court of Criminal Appeal last Monday, the Lord Chief Justice commented adversely upon the course followed of drawing one indictment for each charge against a person indicted for four burglaries. It was explained that that course had been taken in the particular case before the Court of Criminal Appeal because it was felt that it would prejudice the appellant if all the charges against him were contained in one indictment. The Lord Chief Justice pointed out that there was not the slightest reason why all the charges should not have been included in one indictment. The Indictments Act, 1915, s. 4, and r. 3 made thereunder, in effect provide that charges for any offences, whether felonies or misdemeanours, may be joined in the same indictment if those charges are founded on the same facts, or form or are a part of a series of offences of the same or of a similar character. "It is difficult," said Lord HEWART, "to imagine a case which would more clearly come within that rule. If in any case it is suspected that the combining of charges in one indictment may prejudice the prisoner, the answer is two-fold. It is not more prejudicial for a man to be called on to plead to more than one count in an indictment than for him to be called on to plead to more than one indictment. Secondly, the court in a proper case will undoubtedly call on the prosecution to make an election and proceed on one charge only." It may be observed that s. 4 and r. 3, *supra*, do not provide that there "must" or "should" be a joinder of charges in the cases mentioned. They only enable a joinder to be made. The Lord Chief Justice's observations go further; they recognize, if they do not establish, the practice of joining all charges in all cases which fall within s. 4 and r. 3.

What is "Performance in Public" within the Copyright Act?

IN *Harms (Incorporated) Ltd.* v. *Embassy Club, Ltd. and Another*, *Times*, 21st inst., the question arose whether or not the performance by the orchestra at the Embassy Club of a musical work was a "performance in public" within the meaning of the Copyright Act. As Mr. Justice EVE pointed out in that case, the question whether a particular representation is a public or a private one is to a large extent a matter of fact to be determined according to the circumstances in each case. There are, of course, a number of elements or factors to be taken into consideration to determine such facts. Thus, Lord Justice BOWEN remarked in the leading case of *Duck* v. *Bates*, 13 Q.B.D. 843 (where the question was whether a room in Guy's Hospital, where a dramatic piece was represented without the consent of the proprietor of the copyright, was, or was not, a place of public entertainment): "Profit is a very important element; the question of numbers also is very important; these are matters to be taken into consideration."

In the *Embassy Club Case* the performance was open to be attended by as many of the 1,800 members of the club and their guests as could be accommodated on the club premises. This fact EVE, J., described as introducing "an element so alien to any idea of privacy or domesticity as to stamp the performance with a publicity sufficient to make it an infringement of the plaintiffs' copyright," and a declaration to that effect was granted.

Michael Angelo Taylor's Act.

BEFORE THE invention of short titles to statutes, the practice was not uncommon to cite an Act of Parliament, not by regnal year and chapter, but by the name of the Member of Parliament who was mainly responsible for its enactment, or by the name of the person whose affairs gave occasion to its existence. Chancery practitioners still speak, for example, of Lord Cairns's Act and Locke King's Act, just as their brethren at the common law bar talk of Baines's Act and Jervis's Act—the statutes so referred to having been sponsored in Parliament, if not actually drafted, by the distinguished lawyers whose names are thus associated with them. This practice may not be quite so common as it once was, but there is still one old statute which continues to be described in this fashion, namely, the Act officially known as the Metropolitan Paving Act, 1817, but which more frequently is spoken of as Michael Angelo Taylor's Act. Whether this is due to the slightly ridiculous combination of the great Italian artist's names with the common English patronymic, Taylor, we know not, but it is curious that the practice is inveterate to cite the Act, which he was mainly instrumental in passing and which came before the Divisional Court a day or two ago to have one of its sections elucidated, almost invariably by his name. But MICHAEL ANGELO TAYLOR—we would not for the world dock him of his full name—was a man of some importance in his day—a barrister and a useful Member of Parliament, who not only secured the enactment of the statute to which we have referred, but was mainly instrumental in abolishing the pillory. To him, moreover, is due the credit of having been in Parliament one of the earliest and severest critics of the interminable delays then

characteristic of the old Court of Chancery, and thereby initiating the reform of that tribunal, much to the annoyance of its head, Lord ELDON. His chief, almost his sole, title to remembrance nowadays, however, is his association with the Act of 1817, a useful measure for securing street improvements in the metropolis.

The Expedition of Income Tax Appeals.

IT HAS no doubt been observed that more than once during the present Law Sittings Mr. Justice ROWLATT, when dealing with appeals on cases stated by the commissioners under the Income Tax and Stamp Acts, has complained of the delay in setting down these cases for hearing, resulting at times in considerable inconvenience to the parties. The Lord Chief Justice has now issued two directions for the purpose of expediting the hearing and they are as follows: (1) It shall no longer be necessary to exchange points of argument as heretofore, provided that either party may, not later than ten days before the argument, give to the other party notice in writing of any point intended to be made which would be likely to take the other party by surprise, in default of which the court may adjourn the argument on such terms as may be just. (2) A case may be set down by either party subject to the same conditions in all respects as cases have heretofore been set down by the party at whose instance they have been stated. The effect of these new directions will be that either party to a revenue case can in future press the matter on to a hearing, with the result that it will be heard without having to wait for any step to be taken by the other side. Mr. Justice ROWLATT, in referring to this change, particularly emphasized the fact that they are the directions of the Lord Chief Justice, and whilst, therefore, they will effect a change in the unwritten usage of the revenue side of the King's Bench Division, they do not in any way modify any rules of court which can of course only be altered by the Rule Committee. The actual order in which cases are called in court will remain in the discretion of the Attorney-General who has to make the necessary arrangements for their argument. All persons interested will, we think, appreciate these directions, which should go a long way to prevent the delays which have occurred in the hearing of these appeals in the past.

Retrospective Operation of Statutory Provisions empowering Court to Increase Permanent Maintenance.

A SHORT BUT important point, as to whether the provisions of s. 1 of the Matrimonial Causes Act, 1907 (now re-enacted in the Supreme Court of Judicature (Consolidation) Act, 1925) are retrospective in their effect, was decided by HILL, J., in *Edmunds* v. *Edmunds*, 1926, W.N. 244.

There an order for permanent maintenance had been made on the 17th April, 1905, under s. 1 of the Matrimonial Causes Act, 1866. That Act, however, although it gave the court power, *inter alia*, to vary the order according to the means of the husband, conferred no power of increasing the amount of maintenance which the husband had been ordered to allow the wife. This power was first conferred on the court by s. 1 (2) (*b*) of the Matrimonial Causes Act, 1907, which was passed on the 9th August, 1907, subsequently to the date on which the order for maintenance had been made in *Edmunds* v. *Edmunds*. Paragraph (*c*) of s-s. (2) of s. 1 of the Matrimonial Causes Act, 1907, provides that "where the court has made any such order (i.e., for the payment by the husband to the wife of such monthly or weekly sum for her maintenance and support as the court may think reasonable) . . . and the court is satisfied that the means of the husband have increased, the court may, if it thinks fit, increase the amount payable under the order." This provision is now re-enacted in identical terms in s. 190 (2) (*b*) of the Supreme Court of Judicature Act, 1925. In *Edmunds* v. *Edmunds*, the wife accordingly filed a petition under the Matrimonial Causes Act of 1907, on the 30th July, 1925, the Supreme Court of Judicature Act, 1925, which came into force on the 12th January, 1926, not being in force on that date. It was objected, however, that the original order for permanent maintenance had been made in 1905, before the Act of 1907 came into operation; the court had no power to increase the amount of maintenance. Mr. Justice HILL, however, held that the Act of 1907, as well as the Act of 1925, had a retrospective effect, and that accordingly the court had jurisdiction to order an increase of the amount of maintenance if it thought fit.

The Criminal Justice (Amendment) Act.

ATTENTION MIGHT usefully be drawn to the Criminal Justice (Amendment) Act, 1926, which was passed in order to make certain necessary amendments to s. 7 of the Criminal Justice Act, 1925.

Sub-section 1 of s. 7 of the Act of 1925 was intended to remove doubts as to whether there was a right of appeal for a person dealt with under s. 1 (1) of the Probation of Offenders Act, 1907. This latter provision (in the Probation of Offenders Act, 1907) gave the court of summary jurisdiction power to dismiss the charge or to discharge the offender conditionally, without proceeding to conviction, so that it was arguable that the alleged offender had no right of appeal (*cf. Oaten* v. *Auty*, 1919, 2 K.B. 278). Sub-section 1 of s. 7 of the Criminal Justice Act, 1925, however, was so worded as to give a right of appeal only where a probation order had been made by the justices, but the necessary amendment has now been made by s. 1 (2) of the Criminal Justice (Amendment) Act, 1926, which gives a right of appeal in every case in which an order has been made under s. 1 of the Probation of Offenders Act, 1907. It is immaterial, therefore, whether or not a probation order is made.

Sub-section 2 of s. 7 of the Criminal Justice Act, 1925, again, was so worded as to empower an order for payment of damages or costs by the offender to be made only as a condition of the recognizance. Sub-section 1 of s. 1 of the Act of 1926 makes the necessary amendment, by providing that where an order is made under s. 1 of the Probation of Offenders Act, 1908, the court may order the defendant to pay damages or costs. The court has, therefore, the power to make such an order where the charge is dismissed, and the defendant is ordered to enter into recognizances, quite independently of the order for recognizances.

Two apparent slips in the use of the expression "probation order," in s-s. 4 and s-s. 6 of s. 7 of the Criminal Justice Act, 1925, are remedied by paras. (*b*) and (*d*) of s. 1 (2) of the Criminal Justice (Amendment) Act, 1925. Instead of the words, "without prejudice to the continuance in force of the probation order" (in s-s. 4 of s. 7 of the Criminal Justice Act, 1925), must now be read "without prejudice to the continuance in force of the recognizance"; and instead of the words "where a person as respects whom a probation order has been made" (in s-s. 6 of s. 7 of the Criminal Justice Act, 1925), must now be read "where a person bound by his recognizance to appear for conviction and sentence." The effect of these amendments is to extend the operation of s-s. 4 and s-s. 6 to cases where the recognizance does not include a condition as to supervision.

Sub-section 5 of s. 7 of the Criminal Justice Act, 1925, gives a court, other than the court by which the offender was bound, power to inquire into the question whether there has been a breach of recognizances. In that event the offender is to be sent to the court by which he was bound. The fact that there has been a breach is provable by a certificate signed by the justice or justices who have inquired into the alleged breach. According to the original wording of s-s. 5, however, it would have been necessary to prove the certificate, and to give formal evidence of the signature of the justice or justices. This defect is therefore now remedied by para. (*c*) of s. 1 (2) of the Criminal Justice (Amendment) Act, 1926, so that the certificate will now prove itself.

Solicitors North and South of the Tweed.

THE author of "Solicitors, by One of Them" says in his book that the keynote of a solicitor's life is service. He might have added "at a price." This is common to the profession in all countries. It is equally common that the service, in all but exceptional cases, is rarely deemed by the client to be worth the price. This will always be until solicitors become philanthropists. In that day they will surely die from the weight of bouquets thrown by grateful clients, if not from less spectacular causes. In that day also the coroner will be no more and historians will be robbed of an illuminating verdict. So much for solicitors in general.

Coming from north of the Tweed the first impression gathered of our professional brethren is that, generally speaking, the average solicitor south of the Border does not appear to enjoy the same public status as his colleagues in Scotland. A comparison of their respective bills of costs, however, does not show that to be a particular disadvantage. That apart, one is led to inquire the cause. At first sight it may be attributed to the relative numbers in practice. But there are other causes, partly historical and partly arising from changed conditions. The old obloquy attending the career of attorney in the past, which continued in measure until the power of The Law Society had vindicated an honourable profession, seems to lie deep. If it rarely finds utterance to-day it is none the less not altogether absent from the minds of the less instructed in the community. In Scotland on the other hand, beyond the general uneasiness that has always manifested itself among laymen when dealing with lawyers, the profession never seems to have suffered from such universal contumely. This does not suggest any higher standard among the "attorneys" of Caledonia. On the contrary, the records show that they were, if at all, equally reprehensible with their Sassenach brethren. If it shows anything it is a greater sublety in concealing their delinquencies. This same subtlety may have influenced them in the choice of a name. It is only during the last two generations that the name solicitor came into common use. Many of the older firms, even to-day, are rather chary of its adoption. The respected progenitors of the profession in Scotland who battened on their shiftless and sometimes unfortunate clients in the spacious days of *seisin a me vel de me* carried their virtues and cloaked their vices under the unpretentious name of "Writer."

As the capital of Scotland grew, so did the writers in that city wax in wealth and power. At an early stage they obtained a charter conferring on them certain privileges, particularly pertaining to Crown proceedings and issues before the Supreme Court. From these privileges all other writers in the country were excluded. Thus evolved the Society of Writers to His Majesty's Signet, whose abbreviated designation in the letters "W.S." holds generally a peculiar glamour and has somewhat the effect of a mystery for those south of the Border. Many will be disappointed to learn that the charges allowed these gentlemen by law are the same as those sanctioned to their less substantial brethren the common or garden writers. This is the more surprising, when we consider that many of the present landowners in Scotland derive their patrimony from the savings of a one-time respectable Writer to the Signet. To-day, however, the Society is merely a wealthy corporation, with somewhat conservative tendencies. Its membership is practically recruited from those of considerable means, which of course naturally handicaps it in other directions. It has been shorn of practically all privileges. Indeed, save in the matter of signing all summonses passing the Signet (the seal affixed to all Court of Session Summonses), there is no legal practice left to the members of this Society that cannot now be performed by any qualified solicitor. But even in this small matter the "W.S." is left no discretion. He must sign a summons on request on being tendered half a crown.

Just as in England the distinction exists in Scotland between solicitors practising in the capital and those practising in the provinces. This led to the establishment of the Society of Solicitors, practising before the Supreme Court (who designate themselves "S.S.C."), among those solicitors who did not wish the honour or could not afford the substantial fees of the Writers to the Signet. But any admitted solicitor may practise before the Supreme Court on paying the additional stamp duty and signing the Rolls of Court.

The great drawback to the strength of the profession in Scotland to preserve professional privileges intact and prevent encroachment in their legitimate sphere of work has been the lack of unity and central authority. This has partly continued from the fact that a solicitor may be admitted and commence to practise without joining any professional society, and from the existence of societies of local solicitors all over the country in no way co-related. These societies are not sufficiently free from local prejudice to enforce any real discipline on their own members and, of course, have no power over others. It is true that the Incorporated Society of Law Agents exists for the whole country, but while it has done much good work in the interests of the profession its membership is voluntary and it possesses no real power. The result is that disciplinary action can only be taken by means of an application to the Court of Session—an expensive process to which resort is rarely had. In this respect the profession in Scotland could do no better than copy the measures taken by their brethren in England when the Incorporated Law Society was formed. Such a step could not fail to have a very beneficial effect in preserving and strengthening that public confidence and status that the profession in Scotland has hitherto enjoyed and desires to retain. Further, if this reform was once achieved, active co-operation with the Society in England would be practical in the many matters of common interest that affect both sides of the Border at present, and will tend to do so even more in the future.

A criticism which a Scots solicitor generally makes of his English colleague is that the latter accepts much less responsibility to his client. This criticism so far as justified appears to be due to two causes. The limited functions of advocacy permitted to the solicitor in England places him largely without choice in the position of a warming pan to counsel. The more or less chaotic state of titles to land in England, largely due to the complications of equity and the prevalence of settlements and undivided shares, compel him to seek the protection afforded by the opinion of counsel. In Scotland, on the other hand, equity as such is unknown, and, of course, registration has been a feature of the land law from the seventeenth century onwards. The contrast is rather remarkable in this respect. Whereas in England many counsel may be said to live on titles to land, the occasions on which questions of title are submitted to counsel in Scotland are very limited. During an experience extending over twelve years, in various large conveyancing offices, the writer has not known of half a dozen questions of title submitted to counsel or a single will sent to counsel to settle the draft. On the other hand disputed points in titles are frequently submitted to the informal arbitration of a recognized conveyancing solicitor who has acquired a reputation locally. True, his opinion would not protect the solicitors who accept the decision if it proved to be radically wrong, but hitherto this has remained but a risk.

Again, in matters involving consideration of law and often determining the prosecution or restraint of actions involving substantial sums, it is quite common for the client in Scotland to rely solely on the judgment and advice of his solicitor in circumstances where in England it is usual to take the opinion of counsel. This appears due to the wide jurisdiction of the

Sheriff Court in Scotland. Actions in that court involving sums of £1,000 or more are quite common. These are conducted almost exclusively by solicitors. This, of course, demands of the solicitor familiarity with current law and skill in written and oral pleading, usually claimed as the exclusive attainment of counsel. But it takes the solicitor out of the category of a mere intermediary which he so largely occupies in most litigation in England. A more just appreciation exists between the two branches. The client has greater respect for the solicitor. He regards him as a lawyer and the barrister as a specialist, only to be called in for very serious operations.

This point of view seems overlooked to a considerable extent in England. It is often asserted that the qualities demanded of the successful barrister and those of the successful solicitor are entirely different. That is no doubt true. An eminent ex-judge stated in the House of Lords recently that solicitors have always been afraid of fusion, as if it came they would lose their lucrative practices. At the best that admits of very grave doubt. The Sheriff Court in Scotland seems to show that a combination of the qualities that go towards success in both branches exists and can be cultivated. But apart from any question of fusion which is without the scope of this article, the modern tendency is and continues to be towards less formalism. The profession must anticipate at no distant date a serious demand for less expensive litigation. To prepare to give, generally involves less loss than to wait to have taken. Some part of the present system, involving as it does certain duplication, will, we should think, have to be cut out. How is that going to affect solicitors? It is well that the profession should be prepared against the cut.

VENIO.

The Bankruptcy (Amendment) Act, 1926.

THE Bankruptcy Amendment Act, 1926, which was passed on the 26th June, 1926, contains some important alterations of the law of bankruptcy, which it would be as well to note.

DISCRETION AS TO DISCHARGE IN CASE OF FELONIES AND MISDEMEANOURS.

Under s-s. 2 of s. 26 of the Bankruptcy Act, 1914, the court was directed to refuse the discharge in all cases where the debtor had committed certain felonies and misdemeanours in connexion with his bankruptcy. These felonies and misdemeanours are now, by virtue of s. 1 (1) (*a*) of the amending Act of 1926, brought into line with the other cases set out in paras. (*a*) to (*e*) of s. 26 (3) of the Bankruptcy Act, 1914, in respect of which the court is given a discretionary power of refusing or suspending the discharge or granting it subject to conditions.

SUSPENSION OF DISCHARGE.

With regard to the power of suspension in these cases, another important alteration is made to s. 26 (2) (ii) of the principal Act. According to this provision, the court was empowered to suspend the discharge for a period of not less than two years, though where the facts were shown to fall only within para. (*a*) of s-s. 3 of s. 26, i.e., where it was shown that the assets were not equal in value to ten shillings in the pound on the unsecured liabilities, the court was empowered to suspend the discharge for a period of less than two years. Now, however, by virtue of para. (*b*) of s-s. 1 of s. 1 of the amending Act, 1926, the court is given in all cases an unfettered discretion as to the duration of the suspension, which accordingly may be more or less than two years.

Another material alteration is effected by s-s. 2 of s. 1 of the amending Act, 1926. One of the cases in which the court was given by s. 26 (2) and (3) of the principal Act a discretionary power of refusal, suspension of the discharge, or the conditional grant thereof, was when the "bankrupt had, within three months preceding the date of the receiving order, incurred unjustifiable expense by bringing a frivolous or vexatious action." Now, not only has this time limit of three months been removed by s-s. (2) of s. 1 of the amending Act of 1926, but it is further provided thereby not only that the bankrupt should have incurred such unjustifiable expense, but that the incurring thereof must have brought on or contributed to his bankruptcy (*cf.* para. (*f*) of s. 26 (3) of the Bankruptcy Act, 1914).

WAGES OR SALARY EARNED BY WAY OF COMMISSION.

Section 33 of the principal Act confers a priority on certain debts, amongst these being the wages or salary of any clerk or servant in respect of services rendered to the bankrupt during four months before the date of the receiving order. At one time it was thought under the previous Acts that commission could not be the subject of preferential payment, but in *Re Klein*, 22 T.L.R. 664, it was held that commission might be part of the salary, and thus entitled to priority. Any doubts as to this are now removed by s. 2 of the amending Act, 1926, which expressly provides that the priority applies to any such wages or salary, "whether or not earned wholly or in part by way of commission."

SECOND AND SUBSEQUENT BANKRUPTCIES.

Section 3 of the amending Act, 1926, makes certain amendments of s. 39 of the principal Act, which refer to second and subsequent bankruptcies.

In *Re Sargeant*, 1923, 2 Ch. 302, it was held that an order under s. 130 of the Bankruptcy Act, 1914, for the administration of the estate of a deceased undischarged bankrupt, was not a second or subsequent receiving order or adjudication within s. 39 so as to divert the estate of the trustee in bankruptcy in favour of the official receiver under the administration order. Section 3 of the amending Act of 1926 now, in effect, provides that the same consequences shall follow on an order being subsequently made for the administration in bankruptcy of the estate of a deceased bankrupt, and thus gets rid of the difficulty occasioned by the ruling in *Re Sargeant*.

Furthermore, any doubts as to whether the trustee under the earlier bankruptcy had a bare right of proof or whether he had the rights of an ordinary creditor who had proved his debt are now removed by the express language in s. 3 (1) of the amending Act, 1926, which provides that "the trustee in the last preceding bankruptcy shall be deemed to be a creditor in respect of any unsatisfied balance of the debts provable against the property of the bankrupt in that bankruptcy."

Lastly, with regard to s. 3, a minor alteration of language might be noted. The original provision in the principal Act merely referred to the happening of second or subsequent receiving orders, which, in itself, would not, of course, vest any property unless followed by an adjudication. The language in the principal Act is now remedied by the addition of words to the effect that the second or subsequent bankruptcy should have been followed by an order of adjudication (*cf.* s-s. (2) of s. 3 of the amending Act, 1926).

PAYMENT OF MONEY OR TRANSFER OF PROPERTY WITHOUT KNOWLEDGE OF RECEIVING ORDER.

Section 4 of the amending Act, 1926, is apparently intended to meet the decision in *Re Wigzell: ex parte Hart*, 1921, 2 K.B. 835. There the debtor had a banking account, which was overdrawn at the date of the receiving order. After the making of the receiving order, advertisement of which had been stayed pending an appeal, the debtor paid various moneys which he had collected from his own debtors into his account at the bank, and he drew upon the bank for various sums, which the bank paid. The bank acted in good faith and had no knowledge that a receiving order had been made. But the bank was held not to be entitled to credit itself with the

payments out to the bankrupt, since the transactions took place after the receiving order had been made and were therefore not protected by s. 45 or s. 46 of the principal Act.

Section 4 of the amending Act, 1926, however, now provides that where any money or property of a bankrupt has, on or after the date of the receiving order, but before notice thereof has been gazetted, been paid or transferred by a person having possession of it to some other person (which will presumably include the bankrupt himself), then, notwithstanding that the payment or transfer is void, if the person who makes the payment or the transfer proves that at the time he had no notice of the receiving order, no right of recovery shall be enforced by legal proceedings by the trustee against such person, "except where and in so far as the court is satisfied that it is not reasonably practicable for the trustee to recover in respect of the money or property or of some part thereof from the person to whom it was paid or transferred."

Bankruptcy Offences.

Section 5 (1) of the amending Act affects paras. 4, 5, 9, 10, 11, 12, 13, 14 and 15 of s. 154 of the principal Act. That section enacts certain bankruptcy offences which rank as misdemeanours, and makes the prohibited acts referred to in the above paragraphs offences only where they are done after the presentation of the petition, or within six months next before such presentation. Sub-section (1) of s. 5 of the amending Act makes these acts offences, when they are done after the presentation of the petition, or within twelve months (instead of within six months) of the presentation of the petition.

Sub-section (2) of s. 5 of the amending Act increases the penalties for the offences of obtaining credit on false representation (para. 13), obtaining credit on the false pretence of carrying on business (para. 14), and pawning, pledging, etc., property obtained on credit (para. 15). These offences are made by s-s. (2) of s. 5 of the Act of 1926 punishable on conviction or indictment with penal servitude for any term not exceeding five years, or, on summary conviction, with imprisonment for a term not exceeding twelve months. (For the previous penalty for such offences, in respect of which no special penalty is imposed, *cf.* s. 164 of the principal Act.)

Sub-section (2) of s. 5 of the amending Act further creates a new misdemeanour, and makes the guilty receiver of property pawned, pledged or disposed of in such circumstances as to constitute an offence under para. 15 of s. 154 of the principal Act, guilty of a misdemeanour, punishable in the same way as if the receiver had received the property knowing it to have been obtained in circumstances amounting to a misdemeanour (*cf.* s. 33 (1) (*b*) of the Larceny Act, 1916).

Section 6 of the amending Act now expressly provides that causing or conniving at the levying of any execution on his property by the bankrupt shall be deemed to be a transfer of or charge on the bankrupt's property for the purpose of para. (*b*) of s. 156 of the Bankruptcy Act, 1914, so that such causing or conniving at the execution, if with intent to defraud creditors, will be a misdemeanour.

Section 7 of the amending Act makes some minor amendments of the provisions contained in s. 158 of the principal Act, which deals with the failure of the bankrupt to keep proper books of account, but these amendments will not become operative until two years after the commencement of the amending Act (16th June, 1926), i.e., until the 16th June, 1928. The effect of these amendments is shortly as follows:

To deal first with s-s. (1) of s. 158. That sub-section applied only to persons who have previously either been adjudged bankrupt or entered into a composition or arrangement, or had a receiving order made in respect of his estate. By para. (*a*) of s. 7 of the amending Act it will now be immaterial whether or not there has been any previous bankruptcy, composition or arrangement, or receiving order, and furthermore the provisions of s. 158 (1) will now only apply in two of the three cases above referred to, i.e., only where there has been an adjudication in bankruptcy or a receiving order, and not where there has been a composition or arrangement.

The proviso to s-s. (1) of s. 158 of the principal Act exempted from its penal provisions (i) persons whose unsecured liabilities at the date of the receiving order did not exceed £100, and (ii) persons who could prove that the omission to keep or preserve proper books of account was honest and excusable in the circumstances of the trade or business. While the latter exemption from criminal liability is preserved intact by proviso (*b*) of s. 7 (*a*) of the amending Act, the former exemption is slightly modified by para. (*a*) of s. 7 of the amending Act of 1926. Exemption is granted by this paragraph not only to persons whose unsecured liabilities at the date of the receiving order did not exceed £100, but also to persons whose unsecured liabilities at that date did not exceed £500, provided that in the latter case there has been no previous adjudication or composition or arrangement with creditors.

Paragraph (*c*) of s. 7 of the amending Act makes some minor alterations in the provisions of s-s. 3 of s. 158 of the principal Act, which purports to define what constitutes a failure to keep proper books of account. That sub-section provided, *inter alia*, that where trade or business involves dealings in goods, accounts of all goods sold and purchased and statements of annual stocktakings must be kept. Paragraph (*b*) of s. 7 of the amending Act further requires that the amount of goods sold and purchased must show the buyers and sellers thereof in sufficient detail to enable the goods and the buyers and sellers thereof to be identified. That paragraph further grants an exemption as far as the keeping of accounts of goods sold and purchased is concerned in favour of retail sales to the actual consumer.

Order by Court for Prosecution on Report of Trustee, Etc.

Section 161 of the principal Act made it obligatory on a court exercising bankruptcy jurisdiction to direct in certain cases the prosecution of the debtor, i.e., upon the report of an official receiver or trustee, or where the court was satisfied upon the representation of any creditor or member of the committee of inspection, that there was ground to believe that the bankrupt was guilty of a "bankruptcy" offence. By a proviso to that section, however, except when an application was made by the official receiver, the court was not bound to direct such a prosecution unless it further considered such a prosecution desirable. This proviso is now repealed by s. 8 of the amending Act, which directs that in no case, is the court bound to direct a prosecution, unless it is satisfied that a prosecution is desirable.

Power of Court to Commit for Trial taken away.

Section 163 of the principal Act gave the court full powers of committing for trial when it was of opinion and had grounds to believe that a bankruptcy misdemeanour had been committed, and the powers included the taking of depositions binding over of witnesses to appear, etc. This power to commit has now been entirely taken away by s. 9 of the amending Act.

Increase of Penalty.

Felonies and misdemeanours created by the principal Act in respect of which no special penalty was prescribed, were punishable by virtue of s. 164 (1) on conviction or indictment with imprisonment, with or without hard labour, for a term not exceeding two years, or on summary conviction with imprisonment with or without hard labour for a term not exceeding six months. Now by s. 10 of the amending Act, 1926, the penalty on summary conviction is increased from six months' to twelve months' imprisonment, with or without hard labour.

Affidavit by Secured Creditor.

Rule 5 of the 2nd Sched. to the principal Act, 1914, requires every creditor to state in his affidavit whether he is or is

not a secured creditor. By s. 119 of the amending Act, 1926, if it is found that a secured creditor has omitted to state that he is a secured creditor in his affidavit, he must surrender his security to the official receiver or trustee for the general benefit of the creditors. The court, however, on application by such a creditor, on being satisfied that the omission has arisen from inadvertence, may allow the affidavit to be amended upon such terms as to the repayment of any dividends or otherwise as the court may consider to be just.

Dead Freight and Demurrage.

An important decision on dead freight and demurrage has been delivered by the Court of Appeal in *Aktieselskabet Reidar* v. *Arcos Ltd.*, *Times*, 23rd inst. In that case a charter-party provided that a vessel should proceed to Archangel and there load a full and complete cargo of timber to one of several ports mentioned in the charter-party. One of the clauses in the charter-party provided as follows: "Steamship to be reckoned as a four-hatch steamship and the cargo to be loaded at the rate of eighty standards per weather working day for deals and battens and sixty standards for other goods, steamship having four winches." The vessel arrived at Archangel on the 3rd October, and she ought to have started to load on the 4th October, when notice of readiness was given. Had the vessel loaded at the rate provided by the contract, she would have loaded a full cargo of about 850 standards by the 17th October, and if ordered to London could have arrived before the 1st November, when the rules as to the carrying of a winter cargo of less than the vessel might otherwise have carried, would have come into force. These rules as to winter and summer cargoes are laid down by s. 10 of the Merchant Shipping Act, 1906, which provides that if a ship, British or foreign, arrives between the last day of October and the 16th day of April in any year to any port in the United Kingdom from any port out of the United Kingdom, carrying any heavy or light wood goods as deck cargo (except under the conditions allowed by that section), the master, and also the owner, if privy to the offence, shall be liable to certain penalties. Now, in the above case, owing to the failure to load at the agreed rate, the master, in anticipation that the vessel would be ordered to a port in the United Kingdom, where the provisions of the above section would apply, refused to take more than 544 standards, the loading of which had been completed by the 23rd October, which was too late to permit of the vessel arriving before the 1st November. The plaintiffs accordingly claimed dead freight, i.e., the difference between the freight which the plaintiffs' vessel would have carried had a full and complete cargo been loaded and the freight actually carried. To this claim the defendant set up two defences, viz., (1) that the plaintiffs were not entitled to dead freight, as a "full and complete" cargo had been loaded by the defendants in view of the statutory provision referred to above, which prevented the carriage of a full summer cargo; and (2) that, in any event, the plaintiffs were only entitled to demurrage at the agreed rate (£25 per day) for the five days during which the ship had been delayed beyond the lay days.

To deal, firstly, with the question as to whether there was in this case any breach by failure to load a "full and complete" cargo. Both Mr. Justice Greer in the court below, and the Court of Appeal, held that there was such a breach. The ground of this decision would appear to be based on the principle that what constitutes a full and complete cargo must be ascertained by reference to those stipulations of the charter-party which provide for the rate of the loading. "What are the obligations of the charterer?" says Greer, J. (1926, 2 K.B. at pp. 86, 87). "He has two duties to perform in relation to the loading of the cargo. One is that he has to load a full and complete cargo, and the second is that he has to load at the agreed rate. What is the meaning of a full and complete cargo under the charter-party of this vessel chartered to load at Archangel and discharge in Manchester? In my judgment it means that which would be a full and complete cargo if the charterer complied with his obligation to load at the agreed rate. That means that it would in this case have been a complete summer cargo and would have consisted of, I think, 850 standards."

In the Court of Appeal Lord Justice Bankes expressed the opinion that the question whether there has been any breach of contract in failing to load or discharge within the agreed lay days, or at the stipulated rate, under a charter-party which provided for a fixed number of lay days and for the rate of demurrage, but did not provide for any fixed number of days on demurrage, depended on the correct view as to whether the admitted obligation on the part of the shipowner to continue to keep the vessel at the port after the expiry of the agreed time depended upon an implied term to that effect in the contract, or upon the necessity of the master having to remain a reasonable time before he was in a position to say whether the conduct of the charterers in not performing their obligation amounted to a repudiation.

In the recent case of *Proctor, Garratt, etc.* v. *Oakwin Steamship Co., Ltd.*, 1926, 1 K.B. 244, it was held that it was the duty of the master to remain a reasonable time after the expiration of the time mentioned in the charter-party, but the question was left open in that case as to the true basis of this obligation. This principle was approved by the Court of Appeal in *Ethel Ratcliffe Steamship Co. Ltd.* v. *Barnett*, 42 T.L.R. 385; 70 Sol. J. 484, but that court again found it unnecessary to determine the ground on which this obligation is based. The problem, however, has now been tackled by the Court of Appeal in *Aktieselskabet Reidar* v. *Arcos Ltd.*, *supra*. In his judgment in this case, Bankes, L.J., said that he preferred to rest the necessity for the vessel remaining after the agreed period "upon the ground that time not being of the essence of the contract, the shipowner will not, except under some exceptional circumstances, be in a position to assert that the contract has been repudiated unless the vessel does remain a sufficient time to enable that question to be tested," and not upon any implied term in the contract of charter-party. If that view was correct, the learned Lord Justice pointed out that it followed that under such a charter-party, as the one referred to above, where there was no provision for any fixed days on demurrage, a breach of contract would be committed by the charterers if they failed to load or discharge within the agreed lay days or at the agreed rate.

The second question that the court was called upon to decide in the above case was the question of damages, i.e., whether the plaintiffs were entitled to dead freight, or whether, on the other hand, they were only entitled to demurrage at the agreed rate for the extra number of days during which the ship had been unnecessarily detained.

Mr. Justice Greer held that the charterers were entitled to recover damages for dead freight, and with this view the Court of Appeal agreed. In his judgment (1926, 2 K.B., at pp. 87, 88) Mr. Justice Greer said: "It is said that all that happened in this case was that there was a delay in loading and that the contract has completely provided for the amount that is to be paid by the charterer for that delay in loading, and attention is called to the provision about the £25 damage. In my judgment . . . that merely provides for damages at so much per day for detention of the ship. But that does not prevent the plaintiff shipowner from saying also, in a case where there has been detention of the ship, that there has been a breach of the primary obligation to provide a full and complete cargo. As I say, a full and complete cargo, in my judgment, means that which would be a full and complete cargo for the vessel, if loaded in accordance with the terms of the charter-party."

It should be observed that the claim for freight was essentially distinct from any claim for detention of the vessel. Had that not been so, the plaintiff would not have been entitled to anything but the agreed demurrage. In *Inverkip Steamship Co. Ltd.* v. *Bunge*, 1917, 2 K.B. 198, a charter-party provided, *inter alia*, that if a steamer was detained longer than five days, the charterers were to pay demurrage. In the events that happened the vessel was detained beyond the stipulated time, and the charterers paid demurrage at the agreed rate for each day the ship was detained. As the ship, however, was being unduly detained, the owners claimed that the charterers were not entitled to detain the ship any longer, but the ship, however, was detained for a further period of time and a cargo eventually loaded. The owners claimed damages for detention of the ship in respect of this *further* period, at a rate far in excess of the demurrage rate. It was held by the Court of Appeal, however, that they were only entitled to be paid in respect of this further detention of the ship at the agreed rate of demurrage.

A Conveyancer's Diary.

What is a Settlement?

The case of *Bosworthwick* v. *Bosworthwick* (reported on p. 857, *infra*), which was argued before the Court of Appeal on the 13th and 14th inst., raised a question of interest and importance; the substantial question being, what is the meaning of the words "ante-nuptial or post-nuptial settlements" as used in the Divorce Acts?

The parties were married in October, 1897; a decree absolute for dissolution of the marriage was made on the wife's petition in January, 1925. There was no issue of the marriage. An ante-nuptial settlement relating to certain property of the wife was executed, and as to this settlement there was no application to vary and no question arose. About five years after the marriage, the wife executed two instruments in her husband's favour—(1) a bond executed in December, 1902, to secure payment of an annuity of £300, and (2) a deed of appointment, executed in January, 1903 (under a power given to her by a settlement executed by her uncle and by his will, of appointing a life-interest in certain funds in favour of a surviving husband) by which deed the wife appointed £600 a year to be paid to the respondent, if he survived her, for the residue of his life.

On the 3rd March, 1925, a petition to vary was filed, with a view to having the husband's interest under both these instruments extinguished. The Assistant-Registrar reported that there was no jurisdiction to vary either of them—on the ground, as regards the bond, that it was not a "post-nuptial settlement," and, as regards the appointment, that the variation would not be for the "benefit of the children of the marriage or of the parties to the marriage," within the statute, but for the benefit of third parties, namely the wife's brothers, who took in default of appointment. The learned President, in a considered judgment, refused to confirm the report, and held that the court had jurisdiction—as regards the bond, on the ground that it was a settlement, and as regards the appointment, on the ground that a variation was for the wife's benefit, since the wife, although of advanced years (seventy-two) might marry again, and it would be an advantage to her to have the power of appointing to such future husband. Lord Merrivale did not cancel the appointment already made, but varied the instrument by giving liberty to the wife, if she should marry again, to make an appointment taking priority over the appointment in favour of the respondent. Against this part of the order there was no appeal. The appeal was only against that part of the order which directed that (without prejudice to the respondent's right to the arrears of the £300 annuity up to the date of the order) the bond should "be held to be discharged."

The jurisdiction in these cases now rests upon s. 192 of the Supreme Court of Judicature (Consolidation) Act, 1925, which takes the place of, and is substantially in the same terms as s. 5 of the Matrimonial Causes Act, 1859. The section so far as material, is in the following terms:—

> "192. The Court may, after pronouncing a decree for divorce or for nullity of marriage, *enquire into the existence of ante-nuptial or post-nuptial settlements* made on the parties whose marriage is the subject of the decree, and may make such orders with reference to the application of the whole or any part of *the property settled* either for the benefit of the children of the marriage or of the parties to the marriage as the Court thinks fit." (The italics are mine.)

Neither in the present enactment, nor in the repealed statute, is there any definition of the word "settlement," and the expressions "ante-nuptial and post-nuptial settlements," as used in the Act, must therefore have the meaning given to them by the general law. In Lord Halsbury's volumes of the Laws of England (vol. 25, p. 526) a definition is attempted to be given of the term "settlement" as generally understood.

> "A settlement may be defined as any instrument or number of instruments whereby property, real or personal, is limited to or in trust for persons by way of succession, the object being the preservation and regulation of the enjoyment of the settled property between and by the persons or classes of persons nominated or intended by the settlor."

In a footnote on the same page it is stated that the above definition is adapted from that used in the Settled Estates Act, 1877, and the Settled Land Act, 1882 "so as to include property of any nature settled by instruments of any nature."

The policy of the Settled Land Acts being to make land readily saleable, a wide definition of the term "settlement," for the purposes of this legislation, is contained in the Act of 1882; and such definition is enlarged by the Act of 1925. It includes (1) land limited in trust for an infant for an estate in fee simple, (2) land limited to or in trust for a married woman for an estate in fee simple with a restraint on anticipation, and (3) land charged with payment of a rent-charge. But in all the cases specified in this Act, there are either successive interests, or the person entitled is under incapacity or for other reasons prevented from dealing freely with the land in the absence of the statutory power.

The bond in the above case of *Bosworthwick* v. *Bosworthwick* was in common form. By it the wife bound herself to pay to her husband the sum of £3,000, the condition of the bond being that if she paid to him the yearly sum of £300 by equal quarterly payments during his life the bond should be void, but otherwise should remain in full force. The bond was therefore equivalent to a mere personal covenant for payment of an annuity, not secured by any charge.

Independently of authority, probably few persons would describe such an instrument as a settlement. It will be observed, moreover, that two conditions must be satisfied before the power to vary given by the statute can be exercised—(1) There must be an inquiry whether any ante-nuptial or post-nuptial settlement exists, and such inquiry must be answered in the affirmative, and (2) there must be "property settled" to which the order proposed to be made would relate. The question, therefore, was whether the bond was a post-nuptial settlement, and the annuity was "property" settled by it. There are several reported cases—beginning with *Worsley* v. *Worsley*, L. R. 1 P. & D. 648—in which it has been held that a separation deed, in which the husband covenanted (*inter alia*) to pay an annuity to a trustee for the wife, was a post-nuptial settlement, within the meaning of the Matrimonial Causes Act, 1859, and after a decree the covenant has been varied by the Court: *Worsley* v. *Worsley* was followed in *Clifford* v. *Clifford*, 9 P. D. 76, and other cases relating to separation deeds. There have also been

cases where there being an ordinary marriage settlement, either ante-nuptial or post-nuptial, which besides settling property, contained a covenant by the husband, or by the father of the husband or wife, for payment of an annuity, it was held that after a decree the statutory power to vary extended to the annuity. *Callwell* v. *Callwell*, 3 Sw. & Tr. 259, *Sykes* v. *Sykes*, L. R. 2 P. & D. 163, and (*semble*), *Jump* v. *Jump*, 8 P. D. 159, are instances of such cases. On the other hand, in *Chalmers* v. *Chalmers*, 68 L. T. 28, where the wife had made an absolute assignment of certain property to her husband, subject to mortgages thereon, and after a decree the wife petitioned to have the property re-assigned to her, it was held that there was no jurisdiction to make the order asked for, the instrument in question not being a settlement. And in *Hubbard* v. *Hubbard*, 1901, P. 157, where by a post-nuptial deed the husband assigned to a trustee the lease of the house in which the husband and wife lived and the furniture therein upon trust that the trustee, by a deed of even date, should assign the same to the wife absolutely, which was done, and subsequently a decree of nullity of marriage was made, it was held by the Court of Appeal, overruling Jeune, P., that there was no jurisdiction to order the property to be re-assigned to the husband. "In my opinion," said Rigby, L.J., in that case, "the decision of the learned President that this deed is a settlement within the meaning of s. 5 of the Matrimonial Causes Act, 1859, cannot be supported, for the plain reason that the deed is not a settlement at all."

The Court of Appeal's decision in *Bosworthwick* v. *Bosworthwick* was rested, in part, on *Dormer* v. *Ward*, 1901, P. 20, which was also a decision of the Appeal Court. In that case there was an ante-nuptial settlement which contained, amongst various other provisions, a covenant by the intending husband with the settlement trustees to pay to them, during the joint lives of husband and wife, £200 a year, to be paid by the trustees to the wife, without power of anticipation. A decree of nullity having been pronounced, an application was made under s. 5 of the Act of 1859, and it was held that the power to vary extended to (*inter alia*) the £200 annuity. It will be observed, however, that *Dormer* v. *Ward*, takes the matter no further than *Callwell* v. *Callwell*, *Sykes* v. *Sykes*, and other cases where there was a settlement, which, besides limiting property to persons in succession, contained a covenant for payment of an annuity. It is believed to have been the general view in the profession that where there is a marriage settlement, all property comprised in it is "settled property," and accordingly in *Dormer* v. *Ward*, there being a settlement, the £200 annuity was part of the property settled—independently of the fact that it was payable to trustees and that there was a restraint upon anticipation. But where there is a mere covenant for payment of an annuity, it has not been generally supposed that the annuity is in itself a settlement.

How far the decision in *Bosworthwick* v. *Bosworthwick* goes it is difficult to say. It follows from it, logically, that every annuity purchased from the Government or from an insurance office is a settlement; notwithstanding that the annuity might belong to a person absolutely, who might assign it the next day. The correctness of the following passage in the judgment of the learned President, will not be disputed—"It was said quite truly that no case could be produced where a bond such as this was for securing an annuity, had been declared by the Court to be a settlement."

E. P. Hewitt.

Landlord and Tenant Notebook.

Effect of Surrender.— *Continued.*

Inasmuch as in the above case of *Richmond* v. *Savill*, an express surrender could only have been effected by deed, the surrender which, in fact, took place is to be regarded as an implied surrender effected by the yielding up of possession by the executor on the one hand, and the acceptance thereof by the landlord on the other. Both these essentials are necessary to effect a surrender, and mere abandonment of possession by the lessee is not sufficient.

What is the effect of a surrender? Its immediate effect is to destroy the estate existing between the surrenderor and surrenderee, and it is clear that the surrenderor cannot be made liable for any act which might have amounted to a breach of covenant in the lease occurring subsequently to the surrender.

As to the effect of a surrender, reference may be made to *A. G.* v. *Cox*, 1850, 3 H.L. 240, in which case the House of Lords was of opinion that where a lease, containing a personal covenant to pay rent is surrendered, the personal covenant is independent of the estate in the property, and as to rent previously accrued due, is not affected by the surrender: see, for example, *per* Lord Langdale, *ib.*, at p. 275. As to rent accruing subsequently to the surrender, it would appear that such rent cannot be recovered. The case of *Grimman* v. *Legge*, 1828, 8 B. & C. 324, appears to be some authority for this, although it should be noted that that case is to be read subject to the qualification that rent may now be recovered up to the actual day of surrender since it accrues due *de die in diem* by virtue of the Apportionment Act, 1870.

In *Grimman* v. *Legge*, *supra*, the tenant had expressly contracted to pay rent quarterly. During a current quarter a dispute arose between the tenant and the landlord, and the tenant eventually vacated the premises, the landlord accepting possession thereof. It was held that inasmuch as no rent was due at the date of the surrender, the rent not in fact being due until the expiration of the current quarter, the landlord could not recover. By virtue of the Apportionment Act, however, the landlord would now be able to recover rent up to the date of the actual surrender, since rent is to be regarded as accruing *de die in diem*.

Reference might also be made to *Shaw* v. *Lomas*, 1888, 59 T.L.R. 477, in which it was held that the right to recover rent accrued due was not extinguished by a surrender of the term, notwithstanding the absence of a personal covenant by the tenant to pay such rent.

It is also of interest to note the form of the plea in "Bullen and Leake," 3rd ed., at p. 634. The plea is as follows: "That *before* the said rent became due [or, before the alleged breach, or before the breach herein pleaded to, as the case may be], he surrendered to the plaintiff the said demised premises and all the residue of the said term then to come and unexpired thereon, and the plaintiff then accepted such surrender and took possession of the said premises."

If in fact any further authority is desired in support of the proposition that a surrender does not *per se* extinguish the liability of the surrenderor for past breaches of covenant, it is supplied by the decision of the Court of Appeal by their decision in *Richmond* v. *Saville*, *supra*, in which case they did hold the surrendering executor liable for past breaches of the repairing covenants.

It is open, of course, to the parties to contract as to what their rights and liabilities in respect of rent and breaches of covenant are to be, and these are matters which will, no doubt, be dealt with, as a rule, where the surrender is express. Even when the surrender is implied, by operation of law, it is open to the parties to adjust such matters by agreement between themselves, and in *Richmond* v. *Saville*, *supra*, it was in fact urged by the defendant that he had been expressly released from all liability by the terms of the letter sent to him by the landlord's agent, to the effect that the landlord was willing to accept a surrender on certain terms, and "to release" the

executor. In construing this document, however, the Court of Appeal were of opinion that the express release, though in general terms, had to be "read as limited to the matters which were in the contemplation of the parties at the time when the release was given, and that as the only matters that they were then contemplating were the question of a licence to sub-let, or alternatively the determination of the tenancy, which had nothing to do with past breaches of the covenant to repair, the release must be construed as releasing the defendant from the obligation to remain on as tenant until Michaelmas, 1925, and the liabilities thereto attaching, but from nothing more."

Where a surrender does in fact take place, it is perhaps as well to add that, unlike a forfeiture, it does not destroy or otherwise affect an existing underlease, not even if at the time of the surrender the estate was liable to forfeiture: *Parker* v. *Jones*, 1910, 2 K.B. 32. In the case of *Parker* v. *Jones* a tenant of a field had, in breach of covenant, under-let the field, thus entitling the landlord to forfeit. Subsequently the tenant surrendered his lease to his lessor, who, however, was not aware of the under-letting. The lessor thereupon let the field to the defendant, who, upon the underlessee's refusing to give up possession, entered and turned out the latter's cattle. It was held, in an action to recover possession of the land, brought by the underlessee, that the underlessee was entitled to judgment. In his judgment, Bucknill, J., said (*ib.*, at p. 38): "A covenant not to under-let without licence does not make an underletting in breach of that covenant illegal; it merely gives the lessor a right to recover. As between himself and the plaintiff, the lessee allowed the plaintiff, by an act which was not illegal, to take possession, and the lessor did not treat that as a ground for forfeiture. He accepted a surrender from his tenant. Can he, after that, treat the underlessee as a trespasser? I think not." And the fact that the lessor had no knowledge of the breach at the time of the surrender can make no difference to the right of the underlessee.

Correspondence.

Yorkshire—Puisne Mortgage—Registration.

Sir,—Arising out of the last four lines of the answer to *Q.* 392 of "Points in Practice," I should be glad to be enlightened as to the position of a puisne mortgagee, when the mortgage includes land both in Yorkshire and elsewhere, *vis-a-vis* a purchaser from the mortgagor. Section 10 (6) of the L.C.A., 1925, as amended by the L.P. (Amend.) Act, 1926, requires registration to be effected "in the appropriate local deeds registry in place of the registry." The words "in place of" rule out double registration, and the deed is registrable in Yorkshire only. If, therefore, the Yorkshire Registry is not the "appropriate" one within s. 13 (2), there is no "appropriate" registry, and the section does not apply. Either, then, the puisne mortgagee in such case *qua* the land outside Yorkshire appears to have no way of giving notice of his security to the purchaser from the mortgagor, or such purchaser buying, say, land in Cornwall, must search the Yorkshire Registry. I should be glad to know from your learned contributor which is the true view. If the former, obviously land in Yorkshire should not hereafter be included in a puisne mortgage with land elsewhere, and the sooner this is known the better. If the latter, every purchaser of land in England will have to search the Yorkshire Registry. A. F.

[One way of avoiding this apparent difficulty is that suggested by our correspondent, namely, not hereafter to include in a puisne mortgage or any charge or interest registrable under the L.C.A., 1925, land situated within the three Ridings *and* land situated elsewhere in England or Wales. Another suggestion which might be made is that the document creating "any other land charge" should be drafted so as not to show on the face of it that the "other charge" affects land within any of the three Ridings.

But it is submitted that the difficulty suggested is more apparent than real. Where a registrable interest arising under one document will be found to affect land in Yorkshire and land elsewhere, there will have to be double registration (*a*) as to the Yorkshire land in the appropriate local deeds registry, and (*b*) as to the other land in the Land Registry. A Yorkshire deed registry cannot be viewed as appropriate for the registration of an interest affecting any land outside the area, and it is only where there is an appropriate local deeds registry that the registration thereat is to be in place of at the Land Registry. —Ed., *Sol. J.*]

"Walker on Executors"—6th Edition.

Sir,—In your review of the sixth edition of "Walker on Executors" you say that on pp. 12, 45 and 85 there is no reference to s. 165 of the Judicature Act, 1925. This is the exact reverse of the truth. There is a reference on each of those pages, and on p. 85 the section is set out.

In justice to the editor and publishers, this very damaging misstatement should be set right.

4, New Square, 19th July. Sydney E. Williams.

[We have failed to see a direct reference to s. 165 on pp. 12 and 45, but on p. 85 the contents of the section are, in effect, set out, and a reference to the section is made in the footnote on that page. We hasten to correct the mistake made by our reviewer.—Ed., *Sol. J.*]

Trustee Act, 1925, s. 57: Sale of Unsettled Personal Chattels by Trustees.

Sir,—It will, I think, be of some interest to your readers to know that it has been recently held that one of the difficulties of trustees of personal chattels not settled by way of heirlooms can be removed under s. 57 of the Trustee Act, 1925. In a recent case taken in Chambers, not I think reported, where a settlement of a very valuable article of jewellery contained no power of sale, on the joint application of the tenant for life of the article and of the settlor who had power to appoint the article by will subject to the life interest in question, Mr. Justice Eve held that the section referred to gave him the power (which he exercised) to sanction a sale by the two trustees with the consent of the two parties thus immediately interested and without requiring that the persons in default of appointment (who were the common law next-of-kin of the settlor), should be represented on the hearing except and so far as they could be represented by the trustees. The proceeds of sale were directed to be invested as to part, if desired, in appropriate jewellery of a much more modest character and as to the balance in trust investments authorized for the investment of the funds included in the settlement, the income to be paid to the tenant for life.

It will be remembered that in the case of *D'Eyncourt* v. *Gregory*, 3 Ch. D. 635, it was held that the court had no jurisdiction to order or sanction the sale of settled personal chattels, and that the Settled Land Acts, though partially remedying "the mischief" only confer powers of sale of such chattels when settled in reference to settled land, and although in such cases as *In re New*, 1901, 2 Ch. 534, *In re Tollemache*, 1903, 1 Ch. 457, and *In re Hazeldine*, 1918, 1 Ch. 433, the court has recognized its inherent jurisdiction to sanction in cases of emergency irregular dealings with the trust property, there does not appear to have been any reported case over-ruling the decision in *D'Eyncourt* v. *Gregory*. In that case the court had to resort to the costly expedient of authorizing the parties interested to obtain a private Act of Parliament for the purpose at the expense of the settled property. As the Order in the case I mention was made within three weeks of the issue of the application, beneficiaries who find themselves similarly burdened with articles which they cannot effectively use or enjoy may congratulate themselves that the legislation has thus provided a cheap and expeditious remedy for the omission of such an ordinary power from the settlement by its draftsman. Percy Clarke.

London, 20th July.

LAW OF PROPERTY ACTS.

POINTS IN PRACTICE.

Questions from Annual Subscribers are invited and will be answered by an eminent Conveyancer. All questions should be addressed to—The Assistant Editor, "The Solicitors' Journal," 94-97, Fetter Lane, E.C.4. The name and address of the Subscriber must accompany all communications, which should be typewritten (or written) on one side of the paper only and be in triplicate. To meet the convenience of Subscribers, in matters requiring urgent attention, answers will be forwarded by post.

SETTLED LAND—SURRENDER OF LIFE INTEREST—VESTING IN REMAINDERMAN.

407. *Q.* Testator died on the 8th January, 1922, having by his will devised certain property to A for life, and on her death to his son B absolutely. A at the present time is away in one of the colonies, and she wishes to sell her interest in the property. B the remainderman is willing to purchase. The testator appointed only one trustee, I have gone through *Prideaux's Precedents* (1926 ed.), but cannot find a precedent which seems to fit the case. I shall, therefore, be much obliged if you will give me your opinion on the following points, viz.: (1) A vesting assent vesting the property in the tenant for life, must, I take it, be executed seeing that under the 1925 Act the legal estate is in the tenant for life? (2) Must two trustees for the purposes of the S.L.A. be appointed to receive the purchase money from the remainderman? If so (3) can the present trustee of the will be one and he appoint the second? Or (4) must he appoint two for this purpose only? (5) If two trustees must be appointed to receive the purchase money from the purchaser (as remainderman) they will then, seeing the trust is ended, hand the money over to the tenant for life, and their duties so far as this transaction is concerned will be at an end? (6) Can the tenant for life be one of the two trustees? (7) Can the tenant for life pass the legal estate to the purchaser (the remainderman) by an ordinary conveyance between vendor and purchaser without the joining of two trustees under the S.L.A.? If you can give me your views on the above points as soon as possible I shall be obliged, and at the same time perhaps you will refer me to any precedent suitable to my case with references to sections of the Acts. If the present trustee of the will declines to act as one of the trustees under the S.L.A., can he appoint two new trustees, and can either the tenant for life or the remainderman be one or both?

A. The questioner is referred to the answer to *Q.* 383, p. 794, in which a somewhat similar situation is discussed. In answer to the questions: (1) Yes (but a principal vesting deed, not a vesting assent), for the reason given in *Q.* 383. (2) Not necessarily. The purchase money will be paid to the tenant for life personally on the execution of the cesser of her life interest, a deed taking effect in equity. It is only after that deed has been executed, when the situation dealt with in s. 7 (5) of the S.L.A., 1925, has come about, that a legal conveyance can be made under that section. A single trustee can exercise any power under the Act except to receive capital money, see s. 94 (2). (3) Assuming the trustee is also executor and no other trustee can be found under s. 30 (1) of the Act, he is trustee for the purposes of the Act, and not only can, but must appoint another, see s. 30 (3). But A and B can supersede him under s. 30 (1) (v). (4) No, as above. (5) The tenant for life will receive the money for the sale of her interest, as above. It is not capital money. As to a deed of discharge under s. 17, see *Q.* 383. (6) Yes, if desired. (7) By a conveyance after the vesting deed, but by virtue of s. 7 (5) *supra*, and not as vendor and purchaser.

UNDIVIDED SHARES—VESTED IN SOLE TRUSTEE—PROCEDURE.

408. *Q.* By marriage settlement in 1878 land was conveyed to two trustees to whom was assigned a mortgage debt and furniture, all of which were described as "the trust fund," in trust to permit the settlor to have the use of the trust fund during her life and either to retain the trust fund in the same state of investment or at any time with the consent of the settlor during her lifetime, and after her decease at the discretion of the trustees or trustee for the time being to call in, sell or convert into money any or every part of the said furniture and effects and other the trust fund respectively, the real estate for the purpose of that settlement being considered as personalty and forming part of the trust fund and to invest the moneys, etc., etc. And after the death of the settlor in trust for her issue as she should appoint, and in default of appointment in trust for her children in equal shares. Then follows a covenant to convey after-acquired real and personal property to the trustees upon trust for sale. The settlor survived her husband and died in 1925. One of the trustees is dead, and the other is old and infirm. There are two children of the settlor both of full age, and there was no exercise of the power of appointment. The children wish to retain the land and will divide the income from it. (1) Is it necessary to have a vesting deed? (2) Should the trustee convey to the two children? (3) Should new trustees of the settlement be appointed, and, if so, should the two children be appointed? As joint owners the L.P.A. appears to make them trustees for sale in any case.

A. (1) No. The tenant for life having died in 1925, the land was not settled on 1st January, 1926, and the S.L.A., 1925, did not apply. (2) If so required by them under s. 23 of the L.P.A., 1925. (3) The two children will decide the course they prefer. If they have a conveyance to themselves, they hold on trust for sale under s. 34 (2) of the L.P.A., 1925, and their powers of postponing sale (s. 25) and managing until sale (s. 28), including partition if they so wish, should be wide enough for all ordinary dealing with the land. Probably they will prefer to have dominion over the property rather than place it in the hands of others. If the old trustee retires and appoints them, the same result comes about. In either case the recitals should shew that the land is no longer settled so there does not seem much in the choice of methods, except that 10s. might be saved on the stamp by the choice of a deed with a single operation, instead of the appointment and express or implied vesting.

COPYHOLDS—DEALINGS OFF ROLL.

409. *Q.* A was a copyholder in fee, and before 1926 sold to B and covenanted to surrender the tenement to him, his heirs and assigns. B therefore had an equitable estate in the land. No surrender was made to him, and he mortgaged the property back to A, the mortgage deed saying that B granted, surrendered and conveyed the property to A, his heirs and assigns, according to the custom of the manor, subject to the rents, etc. The deed also contained a covenant to surrender by B to the use of A, his heirs and assigns. B subsequently paid off the amount due on mortgage, but A still remained tenant on the Court Rolls. B then sold part of the tenement to C and part to D. If a tenement is sold in parcels at the same time the steward of the manor claims a special fine for the lord of 5 per cent. on the purchase money from every purchaser, which he calls a fine on apportionment. It is not admitted that the lord is entitled to such fine, and in any event he could not claim it if there was no surrender. A at the request of B surrendered to C the land sold to C, and C was admitted and paid the 5 per cent. fine on his purchase

money, and part of the copyhold rent was apportioned to such land. A is still tenant on the Court Rolls as regards the land sold by B to D. A joined in the assurance to D, and A and B covenanted with D that A would surrender to D, his heirs and assigns, and that, in the meantime, A would stand seised upon trust for D, his heirs and assigns or as D, his heirs or assigns should direct. D then mortgaged to E and granted and conveyed the land to E, her heirs, and assigns, subject to the rents and services, and also granted, conveyed and assigned to E the benefit of the covenant to surrender by A, and directed and declared that A should stand seised upon trust for E, her heirs and assigns, subject nevertheless to redemption. A was not a party to this deed. D has now agreed to sell to F. A is still tenant on the Court Rolls, as it was thought best to let his name remain to prevent the lord claiming the disputed fine.

(1) Is the legal estate now vested in A or D ?

(2) If an assurance to F is now made, should A join in it ?

(3) If the assurance to F is presented to the steward, can the latter claim legally any fine he would have claimed if D had been admitted, and also a fine in respect of F's purchase ?

(4) What is the position if the assurance to F is not presented to the steward ?

(5) Who is or are the proper person or persons to enter into a compensation agreement with the lord of the manor ?

A. (1) By the L.P.A., 1922, 12th Sched., para. 1 (*f*), (i), E took a term, and, if not by para. 8 (*g*), then by virtue of s. 202 and paras. 3 and 6 (*d*) of Pt. II (having regard to para. 7 (*j*)), the legal estate in the fee vested in D, subject to F's equity under his contract, which it is D's duty to carry out.

(2) On the above reasoning A, divested of his bare trusteeship as from 1st January, 1926, is not a necessary party.

(3) If proviso (viii) of the 12th Sched., *supra*, applies (as to the doubt about this, see the answer to *Q.* 196, p. 461 *ante*), no fines or fees are payable in respect of the vesting of the legal estate in D, and there was no "former transaction" within s. 129 (2) in respect of D's estate on which arrears would be payable.

(4) It is void under s. 129 (1).

(5) The tenant, as defined in s. 143.

COPYHOLDS—VESTING—FINES AND FEES.

410. *Q.* A died in November, 1925, the unadmitted tenant of a house and land held of two manors, one of which is fine arbitrary and the other fine certain. By her will A appointed her sister B sole executrix and "declared that her house and land at —— in which she was then living (i.e., the copyholds in question) were to be sold," &c. Will proved 4th December, 1925. B has now agreed to sell the property to C. A question has arisen as to the fine and fees payable to the respective lords and stewards. Three sets of fines and fees for each manor are claimed: one on the non-admission of the deceased, another on the admission of the executrix and another on the admission of the purchaser. The fine and fees payable on the non-admission of the testatrix are admitted, but it is contended that there being no devise to the executrix upon trust for sale, but merely a declaration or direction to sell, B is in a position either (1) to extinguish the manorial incidents as executrix of A and sell as freehold free from such incidents, or (2) to sell as freehold subject to such incidents in the same way as before 1926 she could have sold by means of a bargain and sale. In this latter case it is presumed that a set of fines and fees would be payable by the purchaser. It is desired to know whether the stewards can claim in either case fines and fees as on the admission of the executrix, and also whether the fee simple is now under existing circumstances vested in the executrix as having the best right to call for it ?

A. The situation when there was no copyholder in fee on 1st January, 1926, is dealt with in the L.P.A., 1922, 12th Sched., para. (8) (*b*). The will is not sufficiently abstracted to show who had the best right to be admitted copyholder in fee, but if the copyholds were left to B upon trust for sale, and the proceeds of sale were not payable to some one other person absolutely, she would appear to be indicated (see proviso (v) to para. (8), but see also *Q.* 196 as to this), though before she could sell as trustee she would have to appoint another trustee to receive the proceeds of sale in accordance with s. 14 (2) (*a*) of the T.A., 1925, and s. 27 (2) of the L.P.A., 1925. It would appear, however, from the "minor amendments" to these sections in the L.P. (Amend.) Act, 1926, that, although the proceeds of sale must be paid to at least two persons, they need not be trustees of the "disposition," i.e., they may be trustees of the proceeds of sale without having the trust property vested in them, so long as they can procure a conveyance of it to a purchaser. If this interpretation is correct, the need of a vesting declaration by B is obviated, and, since such a "declaration" is an "assurance" within s. 129 (9) the fines and fees thereon are avoided. But there will be fines and fees on the conveyance to the purchaser, and B is personally liable for those which would have been payable by her on admittance under para. (8) (*b*), *supra*. Thus there will be two sets to pay. B cannot, of course, extinguish the manorial incidents except by agreement with the lord or by the compulsory machinery of the Copyhold Act, 1894, incorporated into the L.P.A., 1922, by ss. 138-140, and in either case incidents due and payable are saved by s. 138, proviso (i). The effect of s. 129 (1) to (3) is to save the lord's rights until he has been properly compensated for them.

S.L.A., 1882 TO 1890—CONVEYANCE UNDER—EFFECT.

411. *Q.* By an indenture dated May, 1914, A and B, who had disentailed an entailed estate, resettled the land to such uses, for such purposes and in such manner generally as A and B should by deed revocable or irrevocable from time to time jointly appoint, and in default of appointment to the use that B and his assigns might during the joint lives of himself and A receive the yearly rent-charge of £500 to commence from the date of the settlement and to be charged upon and issuing out of the hereditaments therein comprised and subject thereto to A for life, and after his death to B for life, with divers remainders over. X and Y, or other the trustees or trustee for the time being thereof, were appointed trustees for all the purposes of the S.L.A., 1882 to 1890, and also for all the purposes of s. 42 of the Conveyancing Act, 1881, and it was declared that the trustees should be trustees for the purposes of every compound settlement, consisting of the settlement and any instruments to be executed thereafter. In September, 1925, A, as vendor, and X and Y, as trustees, conveyed part of the property comprised in the settlement called Whiteacre to M and N as joint tenants, the purchase money being paid to the trustees, who acknowledged receipt of it. No reference was made in the conveyance to the rent-charge in favour of B. By a contract dated in February, 1926, M and N agreed to sell Whiteacre to P. P's solicitors contended that the land was settled land coming within that definition, as contained in the S.L.A., 1925, s. 1 (1) (v), and accordingly M and N were tenants for life as defined by s. 20 (1) (ix) of the same Act, and accordingly a compound settlement was created by the settlement of May, 1914, and the conveyance to M and N of September, 1925, that a vesting declaration was necessary, that the trustees of the settlement must join in the conveyance to P and give a receipt for the purchase money, and that B must join to release the property from the rent-charge charged *inter alia* on Whiteacre in his favour. It was subsequently ascertained that A had died on the 15th January, 1926. Accordingly it appeared that a vesting deed was still necessary and the trustees must still join in to receive the purchase money, but it would not be necessary for B to join in to discharge the property from his rent-charge which had ceased on the death of A. A question might have arisen as to any arrears of the rent-charge, but that

appeared to be of small importance. As amending legislation was subsequently talked of the solicitors for P agreed with the solicitors for M and N to await that legislation in the hope that a vesting deed would not be necessary. The section of the amending Act which appears to deal with the matter is s. 1 (1), which in effect gives power to M and N to convey or create a legal estate subject to a prior interest as if the land had not been settled land. It appears that until the death of A that clause in the amending Act would be operative, but now there is no prior interest subsisting because the rent-charge in favour of B has ceased. The questions that arise are—Is the land settled land, and, if so, does the amending Act have any effect to obviate the necessity of a vesting deed and the necessity of the trustees joining in the conveyance by M and N to P ?

A. The effect of the conveyance of September, 1925, was to vest the land in M and N entirely free from the trusts of the settlement: see S.L.A., 1882, s. 20 (1) and (2). So thereafter it was not settled land at all, and s. 1 (1) (v) of the S.L.A., 1925, is excluded because there was no charge on it. The title of M and N so far as recited is therefore good.

INFANT—INCOME AND PROCEEDS OF SALE OF PROPERTY HELD ON TRUST FOR SALE.

412. *Q.* In a case the circumstances of which are similar to those referred to in *QQ.* 24 to 27, SOL. J., Vol. 70, p. 173, except that A is administrator *cum testamento annexo*, the trustees have income in hand which is due for distribution. They are also about to sell part of the property subject to the trust for sale. It is considered inadvisable to pay the income of one of the minors to his parent. A refuses to appoint a new trustee of G's will. The other trustee for sale, who is solicitor to the trust, is very unwilling to go to the court. Can anything else be done ?

A. Two trustees at least, or a trust corporation, must receive the proceeds of sale of land from a purchaser, but otherwise one trustee can act, as before this year. A personal representative, however, must appoint two trustees (himself and another, or two others) for an infant if he wishes for relief under s. 42 of the A.E.A., 1925. Since A will not appoint a co-trustee, he must continue to bear the responsibility of the trust, and as personal representative, he will receive the infant's share of capital or the income of land until sale. A trustee includes a personal representative under the definition in the T.A., 1925, s. 68 (17), and A will have power to apply income for maintenance under s. 31, otherwise than by payment to the infant's parent if the latter is an unsatisfactory character. As to a sole trustee receiving part of the proceeds of sale of land from trustees for sale, see answer to *Q.* 288, p. 631 *ante*.

Obituary.

SIR J. W. CRAIG, K.C.

His Honour Sir John Walker Craig, K.C., who was Recorder of Belfast, and County Court Judge of Antrim, from 1911 to 1919, died suddenly on the 21st inst., at his residence in Sussex, in his eightieth year. He was the youngest son of the late Thomas Craig, of Strabane, and was born in 1847. He was educated at Raphoe Royal School and Queen's College, Belfast, called to the Irish Bar in 1871, and soon built up an extensive practice. From 1897 to 1911 he was County Court Judge of Monaghan and Fermanagh, and for many years he was a commissioner of National and Intermediate Education in Ireland. In 1919 he resigned the Recordership of Belfast, and was knighted a year later.

SIR CHARLES BRETT.

One of the oldest practising solicitors in Ireland, Sir Charles Brett, passed away at his residence, Malone, Belfast, on the 17th inst. Admitted in 1861 he was actively engaged in his professional work for no less than sixty-five years. He occupied a unique position in the profession, and was universally respected. He was a member of the Senate of Queen's University, Belfast, received the honorary degree of LL.D., was knighted in 1906, and being a keen amateur musician was one of the leading spirits of the Belfast Philharmonic Society. Sir Charles is survived by Lady Brett, two sons—Mr. George H. Brett, barrister-at-law, and Mr. Alfred E. Brett, solicitor—and three daughters.

MR. L. D. CORSON.

At Edinburgh recently Mr. Lockhart Dobie Corson, solicitor, died at the age of sixty-eight. The son of the late Rev. William Corson, Girvan, he adopted the legal profession as a career and going on to Edinburgh occupied a responsible position in the office of Messrs. J. & F. Anderson, W.S., but later joined the firm of Messrs. Macandrew, Wright and Murray, W.S., when Sir Thomas Hunter—one of the partners—became Town Clerk of Edinburgh. He was admitted to the Society of Solicitors in the Supreme Courts in 1892.

MR. A. H. BULLOCK.

Mr. Albert Henry Bullock, solicitor, of 33, Park-place, Cardiff, died at Cardiff on the 14th inst. at the age of fifty-nine. Mr. Bullock, who was admitted in 1899, practised in Cardiff and Whitchurch (Glam.), was one of the best known practitioners in the county and was much interested in local affairs. He held the appointment of Clerk to the Managers of the Caerphilly group of Council Schools and was a Member of The Law Society.

MR. A. J. CARRUTHERS.

Mr. Alexander Johnston Carruthers, solicitor, of 31, Great James-street, Bedford-row, W.C.1, died at his residence, 4, Elmfield-avenue, Teddington (Middlesex), on Sunday, the 18th inst., from pneumonia, after a short illness. Mr. Carruthers was admitted in 1901.

W. P. H.

Court of Appeal.

Hyde *v.* **Tyler.** 24th June.

GAMING—BETTING ON HORSE RACE—CLAIM BY WINNER—DISPUTE ABOUT ODDS—WHETHER TO BE BASED ON STARTING PRICE—REFERENCE TO TATTERSALLS' COMMITTEE—PROMISE BY LOSER TO ABIDE BY THEIR DECISION—NO AGREEMENT TO PAY AMOUNT AWARDED—WHETHER NEW AGREEMENT ON NEW CONSIDERATION.

The plaintiff made a bet with the defendant on a horse in a race for the Cesarewitch Stakes. The horse won, and then a dispute arose between the parties about the odds ; the question being whether the plaintiff was entitled to be paid on the starting price which was 100 *to* 1, *or on the basis of the odds being limited to* 33 *to* 1. *The parties agreed to refer the dispute to Tattersalls' Committee. The defendant agreed to abide by the decision of the Committee. The Committee decided that the plaintiff was entitled to be paid at the starting price, and was therefore entitled to recover* £1,000, *and not* £330.

In an action by the plaintiff to recover £1,000 *as awarded by the Committee.*

Held, that the only dispute referred to Tattersalls' Committee, was whether the bet was made at starting price or whether the odds were limited. It could not be said that the mere willingness to refer the matter to the Committee imported a fresh agreement on a new consideration so as to take the matter out of the Gaming Acts. The action failed.

Decision of Horridge, J., *affirmed.*

Appeal from a decision of Horridge, J. The plaintiff brought an action to recover from the defendant the sum of £1,000 on a betting transaction. The plaintiff and defendant were commission agents, and had entered into a betting transaction, the bet in this case being one of £10 on a horse in the Cesarewitch Stakes in October, 1924. The horse won, and then a dispute arose between the parties with regard to whether the plaintiff was entitled to £1,000 or £330. The plaintiff claimed to be paid at the starting price which was 100 to 1, which would mean that the plaintiff ought to receive £1,000. The defendant, however, said that there was an arrangement between him and the plaintiff whereby the odds should be limited to 33 to 1. The plaintiff, on the other hand, said that such an agreement was not in existence at the material time. The defendant refused to pay on the basis of 100 to 1, and it was agreed to refer the matter to Tattersalls' Committee. That Committee, on 6th January, 1925, decided that the plaintiff was entitled to receive £1,000, being the result of the bet at the starting price of 100 to 1. The defendant refused to pay. The plaintiff alleged that the defendant had agreed to be bound by the decision of Tattersalls' Committee. The defendant denied that he had agreed to pay such sum as the Committee should award, and complained that his case was not properly heard by the Committee. He also pleaded the Gaming Act.

HORRIDGE, J., found that the only questions referred to Tattersalls' Committee was with regard to the starting price, and he held that there was no new agreement by the defendant to pay such sum as the Committee should find due, so as to bring the case out of the Act, and he gave judgment for the defendant. The plaintiff appealed.

THE COURT (BANKES, ATKIN, and SARGANT, L.JJ.) held that Horridge, J., was right. The transaction was illegal and the reference to Tattersalls' Committee of the question with regard to the starting price, which was the only question referred to that Committee, did not constitute a new agreement for good consideration, and the rights of the parties were not altered so as to take the case out of the Act. The appeal failed. Appeal dismissed.

COUNSEL: *J. D. Cassels*, K.C., *J. B. Melville*, and *Harold Benjamin*; *Thorn Drury*, K.C., and *E. H. Cannot*.

SOLICITORS: *Hobson, MacMahon & Cobbett*; *Percy Bono and Griffith*.

[Reported by T. W. MORGAN, Esq., Barrister-at-Law.]

Bosworthwick *v.* **Bosworthwick.** 14th July.

HUSBAND AND WIFE—DIVORCE—APPLICATION TO VARY SETTLEMENT—WIFE'S BOND TO PAY ANNUITY TO HUSBAND—WHETHER "SETTLEMENT"—MATRIMONIAL CAUSES ACT, 1859, 22 & 23 Vict. c. 61, s. 5—JUDICATURE (CONSOLIDATION) ACT, 1925, 15 and 16 Geo. 5, c. 49, s. 192.

A bond by a wife, after marriage, to pay her husband an annuity, and a deed poll by which she appointed to him a reversionary interest in property were held to constitute a "settlement," which, on the dissolution of the marriage by reason of the husband's misconduct, the court could vary by the exercise of its discretionary jurisdiction.

Decision of Lord Merivale, P., *affirmed*.

The parties were married in 1897. In 1902 the wife bound herself by bond to pay her husband an immediate annuity for life of £300. By a deed poll, executed on 30th January, 1903, she exercised a power to appoint a reversionary annuity to her husband of £600 expectant on a life interest of her own in certain family property. The marriage was dissolved by reason of the husband's adultery, and the matter came before the court to vary those dispositions. The Assistant Registrar thought that they were not "settlements" within the meaning of the Matrimonial Causes Act, 1859, and subsequent Acts, under which settlements could, after divorce, be varied by the court in the interests of justice between the parties. He thought that he had no jurisdiction to vary. Upon appeal, Lord Merivale, P., thought that the instruments in question were dispositions of property amounting to post-nuptial settlements. He cancelled the interest of the husband in the bond, and postponed the reversionary annuity of the husband to the interest of any husband the wife might afterwards marry. The husband appealed. He contended that in the case of these dispositions, there were no trustees, no successive interests, no charge on any specific property; in short, none of the ingredients of a settlement. The Court dismissed the appeal.

Lord HANWORTH, M.R., said that the sections of the various Matrimonial Causes Acts which gave the court power to vary settlements so as to modify or extinguish the interest of guilty spouses must be looked at to find the meaning of "settlements" in that connection. It was no use, for instance, looking at the apparent meaning of the word in the Bankruptcy Acts, where "settlement" had been defined as a disposition of "property." The President had gone through all the authorities, but there was one case by which the present court was bound. In the case of *Worsley* v. *Worsley*, L.R. 1 P. and D. 648, Lord Penzance said that in alluding to a "settlement" the Legislature had used very general and wide terms. In the case of *Dormer* v. *Ward*, 1901 P. 20, a husband had covenanted to pay a yearly sum of £200. The court dealt with this payment separately, as distinct from property charged, and held that there was power to deal with the covenant. Lord Justice Vaughan Williams showed clearly in his judgment that there was power to treat the covenant as property "settled." The present court could not go against the decision in *Dormer* v. *Ward*, *supra*, because that authority was binding upon it. But he, the Master of the Rolls, would certainly have been inclined to follow *Dormer* v. *Ward* in any case, because he agreed with what was said by Lord Penzance in *Worsley* v. *Worsley*, *supra*, that the word "settlement" as used in the Acts in this connection must be given a liberal interpretation, and a wide one. The appeal must be dismissed.

SCRUTTON, L.J., and ROMER, J., delivered judgments to the same effect.

COUNSEL: *E. P. Hewitt*, K.C., and *F. L. C. Hodson*, for appellant; *J. A. Hawke*, K.C., and *L. J. Pratt*, for respondent.

SOLICITORS: *C. R. A. Edmonds*; *Law & Worssam*.

[Reported by G. T. WHITFIELD-HAYES, Esq., Barrister-at-Law.]

High Court—Chancery Division.

In re **Glyncorrwg Colliery Co.** Tomlin, J. 3rd June.

COMPANY—ACTION BY DEBENTURE-HOLDERS—INSUFFICIENT ASSETS—ORDER OF ADMINISTRATION OF ASSETS—COMPANIES (CONSOLIDATION) ACT, 1908, 8 Edw. 7, c. 69, ss. 107 and 209.

In a debenture-holders' action where there is a deficiency, the assets must be applied in the following order: (1) *costs of realization*, (2) *costs including remuneration of receiver*, (3) *costs, charges and expenses of debenture trust deed including the trustees' remuneration*, (4) *plaintiffs' costs of action*, (5) *preferential creditors*, (6) *debenture-holders*.

This was a summons taken out to ascertain the order in which assets ought to be applied in a debenture-holders' action where there was a deficiency. The facts were as follows: The plaintiffs, as first debenture-holders of the company, brought an action on behalf of themselves and all other debenture-holders of the company, and obtained the appointment of a receiver and manager on 7th April, 1925. The receiver and manager carried on the company's colliery under the direction of the court until 31st July, 1925, when it was closed down. In November, 1925, the usual order was made in the debenture-holders' action, and on the assets being got in

it was found that they were not sufficient to pay the plaintiffs' costs, the costs and remuneration of the trustees under the debenture trust deed, the receiver's remuneration, and the preferential creditors who consisted chiefly of unpaid workmen having claims for compensation under the Workmen's Compensation Acts.

TOMLIN, J., after stating the facts, said: In my judgment ss. 107 and 209 of the Companies (Consolidation) Act, 1908, were intended in two different sets of circumstances to produce substantially the same result. Section 107, which applies here, merely provides on its true construction that the receiver is at the earliest possible moment to pay the claims of the preferential creditors out of assets that would otherwise go to the debenture-holders. In the "Annual Practice, 1926," p. 2339, a note appears as to the order in which funds ought in such a case to be distributed, and reference is there made to a decision of Swinfen Eady, J., in Chambers, in *In re Brooker and Goss Ltd.*, which case is not reported. I have caused search to be made and the Master's minute relating to this case is now before me. It says: "In a debenture-holders' action when there is a deficiency the following is the order in which assets should be applied: (1) costs of realization, (2) remuneration of receiver, (3) plaintiffs' costs of action, (4) preferential creditors, (5) debenture-holders' principal and interest," and then follow the words: "So stated to be by Swinfen Eady, J., in this case." In my judgment the remuneration of the trustees for debenture-holders is in this case under their trust deed in the same position as their costs, charges and expenses. I, therefore, hold that the assets are applicable in the following order: (1) costs of realization, (2) costs including remuneration of receiver, (3) costs, charges and expenses of debenture trust deed including the trustees' remuneration, (4) plaintiffs' costs of action, (5) preferential creditors, (6) debenture-holders.

COUNSEL: *Wilfrid M. Hunt; Gordon Brown; L. W. Byrne; P. H. L. Brough.*

SOLICITORS: *Norton, Rose & Co.; Ingledew, Sons & Brown; Smith, Rundell, Dods & Bockett*, for *Morgan, Bruce & Nicholas*, of Pontypridd.

[Reported by L. MORGAN MAY, Esq., Barrister-at-Law.]

Harms (Incorporated) Ltd. *v.* **Embassy Club, Ltd. and Martans Club, Ltd.** Eve, J. 20th July.

COPYRIGHT—MUSICAL PLAY—INFRINGEMENT—PERFORMANCE IN PUBLIC—PERFORMANCE IN CLUB—COPYRIGHT ACT, 1911, ss. 1, 2.

A musical number which was part of a musical play was performed at a club to which 1,800 members and their guests had access. There was evidence that the performance was calculated to cause serious damage to the owners of the copyright.

Held, that the performance was a performance in public and was an infringement of the plaintiffs' copyright.

This was an action for an injunction to restrain the defendants from infringing the copyright in a musical number called "That Certain Feeling" which was part of a musical play entitled "Tip Toes," by performing it in public without the consent of the plaintiffs or by permitting the Embassy Club to be used for the performance without such consent. The question raised was whether the performance was a performance in public. The defendant company (Martans Club, Ltd.) were the proprietors of the club, which consisted of some 1,800 honorary and ordinary members. By the constitution of the club no person should be a member without becoming also a member of the company, and every member of the company should be a member of the club. It was essentially a club for dancing. All the members were entitled to the privileges of the club, and amongst them was liberty to introduce visitors. All the members were elected for the current year only, and were subject to re-election by the committee annually. On the evening of 4th March, the number of persons present in the club was 180, of whom 130 were members and the rest were guests.

EVE, J., said the sole question was whether the performance on 4th March was a performance in public. If so, it was admittedly an infringement of the plaintiffs' copyright, and they were entitled to relief. The result of the reported cases was to leave the matter to a large extent a question of fact, to be determined according to the circumstances of each case. He did not attach any different meanings to the expressions "performance in public," and "public performance," but in considering to which conclusion the facts, when ascertained, led, it was to be borne in mind that although the object of the law was to protect the owner of the copyright from injury, the Act clearly contemplated performances other than performances in public, and inferentially the possibility that some damage might be inflicted for which no remedy existed. This position seemed to raise a presumption that in determining the ultimate question, the quantum of damage likely to accrue and the number and class of persons invited or having the right to be present at the performance were factors to be noted. Authority for this was to be found in *Duck* v. *Bates*, 1884, 13 Q.B.D. 843, where Bowen, L.J., said: "Some domestic or quasi-domestic entertainments may not come within the Act. Suppose that a club of persons united for the purposes of good fellowship gives a dramatic entertainment to its members, I do not say that the entertainment would necessarily fall within the prohibition of the statute." The defendants here, basing themselves to some extent on the doubt expressed by the Lord Justice, contended that the performance was not otherwise than private, and domestic in that it took place on the premises of the club used solely by the members and their guests. But this did not conclude the matter. Further information as to the constitution of the club, its numerical strength and the class of persons to whom the club was open on the occasion in question, had to be considered. Upon the facts, ought he to hold that a performance open to be attended by as many of the 1,800 members and their guests as could be accommodated on the club premises was a domestic or even quasi-domestic affair? If the Master of the Rolls when he said "a private representation will not injure an author," meant that the quantum of damage resulting to the copyright owner was an element to be considered in determining whether the performance was public or private, there could be no doubt that in this case the performance was calculated to cause serious damage. But beyond this, the fact that, subject to the necessary limitations of space, the performance could have been attended by 1,800 members of the club, each bringing one or more guests, members of the general public, introduced an element so alien to any idea of privacy or domesticity as to stamp the performance with a publicity sufficient to make it an infringement of the plaintiffs' copyright. Accordingly, there would be a declaration to that effect, and an injunction if necessary.

COUNSEL: *Gover*, K.C., and *Henn Collins*; *Vaisey*, K.C., and *Winterbotham*.

SOLICITORS: *Pollock & Co.*; *Whitelock & Storr.*

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

High Court—King's Bench Division

Republica de Guatemala *v.* **Nunez.**

Greer, J. 18th June.

CONFLICT OF LAWS—DEBT—ASSIGNMENT—VALIDITY—ASSIGNMENT BETWEEN TWO FOREIGNERS—DEBT PAYABLE IN ENGLAND.

An assignment of a debt, made payable on demand in this country, between two citizens of a foreign country who are domiciled there, is governed by the law of that country, and if it is invalid by the law of that country it will not be held valid in this country merely because it is in accordance with the requirements of English law.

Interpleader issue tried by Greer, J. The plaintiffs, the Republic of Guatemala, claimed to recover £22,096 9s. 10d., which was deposited in 1906 by Don Manuel Estrada Cabrera, the then President of the Republic, in his own name with Messrs. Lazard Bros. & Co., Limited, bankers, in London. Cabrera was deposed in 1920, and the plaintiffs alleged that Cabrera had transferred to them as public funds the money in question by letters dated 12th July and 11th October, 1921. A son of Cabrera, Don Manuel Estrada Cajas Nunez, also claimed the money by a letter dated 24th July, 1919, which, he said, operated as an assignment of the money to be paid in London on demand. He further alleged that the plaintiffs' letters were obtained by duress while his father was in prison, where he ultimately died. The plaintiffs did not admit that the letter of 24th July, 1919, was written at that date, and contended that it was invalid, by Guatemalan law, as an assignment or gift. Messrs. Lazard Bros. & Co. Limited refused to hand over the money to the plaintiffs, who thereupon issued a writ. The bank then brought the money into court and Don Manuel Estrada Cajas Nunez was substituted as defendant.

GREER, J., said the plaintiffs' case did not cross the boundary that divided strong suspicion from convincing proof, and he was not satisfied that the money did not belong to Cabrera, or that he had voluntarily transferred it to the plaintiffs. With regard to the defendant's claim, the principal question to be decided was whether the validity of that claim was to be determined by English or by Guatemalan law. He was satisfied that the letter of 24th July, 1919, was a genuine document intended to operate as an assignment to the defendant. If the law of England applied the defendant was entitled to the money (see *In re Westerton*, 1919, 2 Ch. 104), but if the law of Guatemala applied the letter was null and void. The letter constituted a donation within the definition of Art. 697 of the Civil Code of Guatemala, i.e., it was a contract or promise without consideration to transfer property. Such a gift, if it exceeded 100 dollars in value, could only be effectively made by a public document. That meant that a written document must be executed on stamped paper before a notary; the donee must notify the donor of his actual acceptance of the donation if not expressed in the document; both parties, if adults, must go before the notary; and the donee must signify his acceptance before the notary. If these provisions were not complied with the donation was a nullity (Civil Code, 2365). It was proved that the letter in question could not operate as a bill of exchange or as an assignment by Guatemalan law. It was argued for the defendant that as the debt was due from an English debtor and payable on demand in England, the validity of any transfer was to be determined by English law. Rule 153 in "Dicey on Conflict of Laws," was relied on. That rule was: "An assignment of a movable which cannot be touched, i.e., of a debt, giving a good title thereto according to the *lex situs* of the debt (in so far as by analogy *a situs* can be attributed to a debt), is valid . . ." If the rule was not too widely stated it would follow that the validity of the assignment to the defendant fell to be decided by English law. It seemed to him (his lordship) a little unreasonable and inconsistent with international comity that a transfer made in a foreign country between two citizens of that country domiciled there and subject to its laws, should be held to be valid as between those who represented the transferor, and would otherwise be entitled to the property in question, and the transferee, merely because it was in accordance with the requirements of English law. The words of Day, J., in *Lee* v. *Abdy*, 17 Q.B.D. 309, applied to the facts of the present case: "It seems to me that the question which really arises here is one of the validity of a contract which is purely foreign, though such contract has relation to a chose in action which possibly arises upon an English contract." For those reasons the claim of the defendant also failed.

COUNSEL: for the plaintiffs, *Comyns Carr*, K.C., and *Percy Handcock*; for the defendant, *Norman Birkett*, K.C., and *Harold Murphy*; for Lazard Bros. & Co. Limited, *John Forster*.

SOLICITORS: for the plaintiff, *J. R. Cort Bathurst*; for the defendant, *Stephenson, Harwood & Tatham*; for the bank, *Linklaters & Paines*.

[Reported by COLIN CLAYTON, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

The "Fagernes." Hill, J. 8th June.

SHIPPING—COLLISION IN BRISTOL CHANNEL—FOREIGN-OWNED VESSEL—ACTION *in personam*—BRITISH TERRITORIAL WATERS—JURISDICTION—SERVICE OF NOTICE OF WRIT OUT OF JURISDICTION.

A tort committed by collision between ships in that part of the Bristol Channel which is twenty miles wide is a tort committed "within the jurisdiction" and leave can be granted pursuant to s. 22, 1 (a) (iii) (iv) of the Supreme Court of Judicature (Consolidation) Act, 1925, to serve a notice of the writ in the action for tort out of the jurisdiction.

Harris *v.* Owners of "Franconia," 1877, 2 C.P.D. 173, *followed.*

Such a place is a bay, gulf or estuary inter fauces terræ *within the decision in* The Queen *v.* Keyn, 1876, 2 Ex. D. 63.

The decision in Cunningham's Case, 1859, Bell's Crown Cases, 72 and 86, *applied.*

Motion. This was a motion by the defendants in an action for damage by collision *in personam* to set aside an order for service of notice of the writ in such action out of the jurisdiction. The defendants were the Societa Nazionale de Navigazione, the owners of the Italian steamship "Fagernes." On 17th March, 1926, a collision occurred in the Bristol Channel between the steamship "Cornish Coast," owned by the plaintiffs, and the "Fagernes." The "Fagernes" was sunk and the "Cornish Coast" damaged, and the plaintiffs thereupon brought this action against the Italian owners and obtained an order in chambers giving leave to serve notice of the writ out of the jurisdiction. The defendants thereupon moved to set aside this order on the grounds that the collision occurred outside British territorial waters, and that the court had no jurisdiction to try the case, and that if there was jurisdiction it was a matter of discretion and the court ought not in the circumstances to exercise its discretion by granting the leave to serve notice of the writ out of the jurisdiction.

HILL, J., in the course of a considered judgment, said: The plaintiffs' claim is for damage received by a ship and for damage done by a ship. Therefore it falls within s. 22, s-s. (1) (*a*) (iii) (iv) of the Supreme Court of Judicature (Consolidation) Act, 1925, and leave can be granted to serve notice of the writ out of the jurisdiction when the action is founded on a tort committed within the jurisdiction. The first question, therefore, is whether the tort or negligence causing the collision and damage was committed within the jurisdiction. The nearest point on the English Coast is a little to the eastward of Ilfracombe and the nearest point on the Welsh Coast is Oxwich Head. The distance across is about twenty sea miles, and the place of collision was ten and a half or twelve and a half miles distant from the English Coast, and accordingly nine and a half or seven and a half from the Welsh Coast according to the cases put by the different sides. The words "within the jurisdiction" mean within the territorial jurisdiction of the King, as was decided by Sir Robert Phillimore in *In re Smith and others*, 1876, 1 P.D. 300, and *Harris* v. *Owners of "Franconia,"* 1877, 2 C.P.D. 173. The Bristol Channel is, at the place in question and throughout its length, bounded by land which forms part of the King's territory.

I have not therefore to deal with the limits seawards of the King's territory where the coast is bounded by an external sea. But whatever be the true view, where the coasts are bounded by the external seas no one has ever doubted that within limits inlets of the sea into the land are part of the territory of the state which owns the land on both sides. Cockburn, C.J., who delivered the leading judgment of the majority of the court in *The Queen* v. *Keyn*, 1876, 2 Ex. D. 63, was very careful to draw the distinction. He says at p. 162: "If an offence was committed in a bay, gulf or estuary *inter fauces terræ*, the common law could deal with it, because the parts of the sea so circumstanced were held to be within the body of the adjacent country or countries; but along the coast on the external sea the jurisdiction of the common law extended no further than to low water mark." There is very little authority relevant to such a sea as the Bristol Channel where it is twenty miles wide or to other bays and inlets with a wide bell-mouth, and international law and lawyers are not agreed on the matter. Therefore I return to the common law with a regret that the Judicial Committee of the Privy Council were not obliged to decide the point in the case of Conception Bay (*Direct United States Cable Company* v. *Anglo-American Telegraph Company*, 1877, 2 A.C. 394). My guide in the present decision is *Cunningham's Case*, 1859, Bell's Crown Cases, 72 and 86. In that case the question was whether a crime committed on board an American ship in Penarth Roads was committed within the County of Glamorgan. It was held that it was, and it was said that the whole of this inland sea between the Counties of Glamorgan and Somerset was to be considered as within the counties of the shores of which its several parts were respectively bounded. What in that case did the court mean by "the whole of this inland sea between the Counties of Somerset and Glamorgan"? The place in question in that case was, it is true, above Lavernock Point, but the words used do not limit the inland sea to parts above Lavernock Point. If the waters above Lavernock Point are *inter fauces terræ*, I see no reason why the same is not true of the waters above a line drawn from Nash Point to the Foreland or the waters above a line drawn from Bull Point to Port Eynon Head. For the purposes of the present case I need go no further. I hold that the tort was committed within the jurisdiction and the court has power to order service of notice of the writ out of the jurisdiction. The second question is whether the court ought to give leave to do so. No doubt the discretion ought to be exercised with care and so as not to be oppressive to the foreigner. No doubt it is of the very greatest importance to the defendants that the plaintiffs should be left to an action in Italy. If the "Fagernes" was to blame it would make all the difference between a liability limited by English law to £8 per ton and a liability limited by Italian law to the ship which lay sunk in some eighteen fathoms of water. It would, however, be pushing a tender regard for the defendants to an extreme limit if on that account I refuse to allow the plaintiffs to bring them before the Admiralty Court. The motion is dismissed with costs.

COUNSEL: *E. A. Digby; Balloch.*

SOLICITORS: *Godfrey Warr & Co.* for *Batesons & Co.*, Liverpool; *Stokes & Stokes.*

[Reported by L. MORGAN MAY, Esq., Barrister-at-Law.]

MONEYLENDER'S JUDGMENT SET ASIDE.

At Manchester County Court recently, Judge Leigh set aside a judgment in a moneylender's action, and said he proposed to send the documents of the case to The Law Society. The judgment was obtained against a woman in June by a registered moneylender of Manchester. On Wednesday last week bailiffs arrived at her house, and, although told by the woman that she knew nothing about any judgment, the bailiff at first refused to leave. The woman, it was added, had never borrowed money from the moneylender, and had never signed a promissory note. She denied that the signature on the documents produced was hers or authorized by her.

Court Papers: Vacation Notice.

High Court of Justice.

LONG VACATION, 1926.

During the Vacation, up to and including Monday, 6th September, all applications "which may require to be immediately or promptly heard," are to be made to the Hon. Mr. Justice Fraser.

COURT BUSINESS.—The Hon. Mr. Justice Fraser will, until further notice, sit in the Lord Chief Justice's Court, Royal Courts of Justice, at 10.30 a.m., on Wednesday in every week, commencing on Wednesday, 4th August, for the purpose of hearing such applications, of the above nature, as, according to the practice in the Chancery Division, are usually heard in Court.

No case will be placed in the Judge's Paper unless leave has been previously obtained or a Certificate of Counsel that the case requires to be immediately or promptly heard, and stating concisely the reasons, is left with the papers.

The necessary papers, relating to every application made to the Vacation Judges (see notice below as to Judges' Papers) are to be left with the Cause Clerk in attendance, Chancery Registrars' Office, Room 136, Royal Courts of Justice, before 1 o'clock two days previous to the day on which the application is intended to be made.

URGENT MATTERS WHEN THE JUDGE IS NOT PRESENT IN COURT OR CHAMBERS.—Application may be made *in any case of urgency*, to the Judge personally (if necessary), or by post or rail, prepaid, accompanied by the brief of Counsel, office copies of the affidavits in support of the application, and also by a Minute, on a separate sheet of paper, signed by Counsel, of the order he may consider the applicant entitled to, and also an envelope, sufficiently stamped, capable of receiving the papers, addressed as follows: "Chancery Official Letter: To the Registrar in Vacation, Chancery Registrars' Office, Royal Courts of Justice, London, W.C.2."

On applications for injunctions, in addition to the above, a copy of the writ must also be sent.

The papers sent to the Judge will be returned to the Registrar.

The address of the Vacation Judge can be obtained on application at Room 136, Royal Courts of Justice.

CHANCERY CHAMBER BUSINESS.—The Chambers of Mr. Justice Eve and Mr. Justice Romer will be open for vacation business on Tuesday, Wednesday, Thursday and Friday only in each week, from 10 to 2 o'clock.

KING'S BENCH CHAMBER BUSINESS.—The Hon. Mr. Justice Fraser will, until further notice, sit for the disposal of King's Bench Business in Judge's Chambers at 10.30 a.m. on Tuesday in every week, except the first week, when the Judge will sit on Thursday, 5th August.

PROBATE AND DIVORCE.—Summonses will be heard by the Registrar, at the Principal Probate Registry, Somerset House, every day during the Vacation at 11.30 (Saturdays excepted).

Motions will be heard by the Registrar on Wednesdays, the 11th and 25th August, and the 8th and 22nd September at the Principal Probate Registry at 12.15.

Decrees will be made absolute on Wednesdays, the 4th and 18th August, and the 1st, 15th and 29th September.

All Papers for Motions and for making Decrees absolute are to be left at the Contentious Department, Somerset House, before 2 o'clock on the preceding Friday.

The Offices of the Probate and Divorce Registries will be opened at 10 a.m. and closed at 4 p.m., except on Saturdays, when the Offices will be opened at 10 a.m. and closed at 1 p.m.

JUDGE'S PAPERS FOR USE IN COURT.—Chancery Division.—The following Papers for the Vacation Judge are required to be left with the Cause Clerk in attendance at the Chancery Registrars' Office, Room 136, Royal Courts of Justice, on or before 1 o'clock, two days previous to the day on which the application to the Judge is intended to be made:—

(1) Counsel's certificate of urgency or note of special leave granted by the Judge.

(2) Two copies of writ and two copies of pleadings (if any).

(3) Two copies of notice of motion, one bearing a 10s. impressed stamp.

(4) Office copy affidavits in support, and also affidavits in answer (if any).

N.B.—Solicitors are requested when the application has been disposed of, to apply at once to the Judge's Clerk in Court for the return of their papers.

VACATION REGISTRAR.—Mr. Bloxam (Room 180).

Chancery Registrars' Office,
Royal Courts of Justice,
July, 1926.

Societies.

The Law Society.

ELECTIONS TO COUNCIL.

The adjourned annual general meeting of The Law Society was held at the Society's Hall, on Thursday, the 22nd inst., Mr. A. H. Coley (Birmingham), president, taking the chair. Those present included Sir Herbert Gibson, Bart., and Mr. C. G. May (members of the council), with Mr. E. R. Cook (secretary) and Mr. H. E. Jones (assistant secretary).

The meeting had been adjourned from the 9th inst. for the purpose of receiving the report of the scrutineers with regard to the election of eleven members of the council to the vacancies caused by the retirement of ten members by rotation under the bye-laws, and the resignation of Sir R. S. Taylor. Mr. H. L. Staffurth (chairman of the scrutineers) read the scrutineers' report which was to the effect that the number of voting papers received was 3,189, of which twenty-seven were rejected on the following grounds: (*a*) Received after the proper date (8); (*b*) Unsigned (10); (*c*) No name struck out (1); (*d*) Spoilt (8). The names of candidates, with the number of votes given in favour of each, were as follows: Charles Augustus Davis, 872; Hugh Matheson Foster (Aldershot), 2,750; Thomas Musgrave Francis (Cambridge), 3,013; Douglas Thornbury Garrett, 2,693; Arthur Murray Ingledew (Cardiff), 2,991; Philip Hubert Martineau, 2,692; Charles Gibbons May, 2,630; Sir Arthur Copson Peake, LL.D., 3,041; Reginald Ward Edward Lane Poole, 2,620; George Stanley Pott, 2,592; Robert Mills Welsford, 2,652; John James Withers, C.B.E., M.P., 2,680; and, with the exception of the candidate first named, they were declared duly elected. Thus, all the retiring members who were candidates were re-elected, the new members being Mr. Foster, Mr. Garrett and Mr. Withers. A vote of thanks to the scrutineers, Mr. Henry Layton Staffurth, Mr. W. Montgomery White, Mr. Gilbert S. Macquoid, Mr. Percy H. Chambers and Mr. Arthur E. Riddett, terminated the proceedings.

HONOURS EXAMINATION.

At the Examination for Honours of Candidates for admission on the Roll of Solicitors of the Supreme Court, the Examination Committee recommended the following as being entitled to honorary distinction:—

FIRST CLASS.

Isaac Hyman Benjamin (Mr. Thomas Richard Ludford, of Llanelly); John Philip Manning Prentice (Mr. John Manning Prentice, B.A., of the firm of Messrs. Gudgeons, Peecock and Prentice, of Stowmarket); Ernest Eric Pugh (Mr. Walter Charles Meaby, of the firm of Messrs. Meaby & Co., of London); Mary Katherine Ruby Weston (Mr. George Augustus Weston, of the firm of Messrs. Weston, Fisher & Weston, of Kidderminster); John Alun Davies, B.A., LL.B., Wales (Mr. David Moy John, of Porth); John Edward Coomber, B.A., LL.B. Cantab. (Mr. Robert Mills Welsford, M.A., LL.M., of the firm of Messrs. Biddle, Thorne, Welsford & Gait, of London).

SECOND CLASS.

James Keith Batty, B.A. Oxon. (Mr. Charles Arthur Buckley, of Manchester); Timothy William Bridge, B.A. Dublin (Mr. Henry Howard Thompson, of the firm of Messrs. Rickerby, Thompson & Yeaman, of Cheltenham); Roland Peace Clarke, B.A., B.C.L. Oxon. (Mr. Arthur Joseph Clarke, of the firm of Messrs. Clarke & Nash, of High Wycombe); George Geoffrey Collins (Mr. Alfred Whitworth, of the firm of Messrs. Briggs and Whitworth, of Manchester); William Marsden Elverston, B.A., LL.B. Cantab. (Mr. Edward Elvy Robb, of the firm of Messrs. Elvy Robb & Welch, of London); Joseph Herbert Hodkin (Mr. William Edmund Wakerley, and Mr. John Leam Middleton, both of the firm of Messrs. Jones & Middleton, of Chesterfield); Edward Holland Hughes, LL.B. Liverpool (Mr. Stephen Roxby Dodds, M.A., LL.B., of the firm of Messrs. Dodds, Ashcroft & Cook, of Liverpool); Sidney Hulme (Mr. James Thorniley, B.A., LL.B., of the firm of Messrs. A. & G. W. Fox, of Manchester); Wilfred Herbert Kelham, B.A., LL.B. Cantab. (Mr. Herbert Kelham, of Stamford); Charles Tunnard Kitchen (Mr. Russell Tinniswood Race, B.A., LL.B., of Lincoln); Charles Herbert Withers Payne (Mr. John Herbert Payne, of the firm of Messrs. Payne & Payne, of Hull); Hugh Quennell (Mr. John Lewis Quennell, of the firm of Messrs. Lewis & Quennell, of Brentwood); George Douglas Shaw, B.A., LL.B. Cantab. (Mr. Frank Tom Carver, of the firm of Messrs. David Allen & Carver, of Hereford; and Messrs. Calder Woods and Sandiford, of London); Hyman Stone, LL.M. Sheffield (Mr. Walter Irwin Mitchell, of Sheffield; and Mr. Horace Albert Dixon, of the firm of Messrs. Albert Dixon & Son, of London); Kenneth Roy Eldin Taylor, B.A., LL.B. Cantab. (Mr. Edwin Craven Midgley, M.A., of the firm of Messrs. Andrew & Co., of Lincoln; and Mr. William Winterbotham, of the firm of Messrs. Waterhouse & Co., of London); Stephen Walker, B.A. Cantab. (Mr. Percy Milnes Walker, of the firm of Messrs. Bury & Walkers, of Barnsley); Cyril John Holberton Wollen (Mr. Thomas Arthur Codner, of the firm of Messrs. Hooper & Wollen, of Torquay).

THIRD CLASS.

Joseph Edgar Wilfred Booth, LL.B. London (Mr. Ernest George Booth, of Manchester); Robert Courtenay Brooks (Mr. Sidney Lauriston Bullock, of the firm of Messrs. Lamb, Brooks & Bullock, of Basingstoke); Harold Duncan Butcher (Mr. Alexander William Kerly, J.P., of the firms of Messrs. Kerly, Sons & Karuth; and Messrs. Nelson, Son & Plews, both of London); Philip Francis Cammiade, B.A., LL.B. Cantab. (Mr. Robert Phillott Gladstone, of the firms of Messrs. Ellis & Willes; and Messrs. Ingpen & Armitage, both of London); Maurice William Claye (Mr. Richard Claye, of the firms of Messrs. Claye & Son, of Manchester; and Messrs. Rawle, Johnstone & Co., of London); Theodore Henry Edgcome Edwards, B.A. Cantab. (Mr. Alfred Percival Dell, of the firm of Messrs. Tozer & Dell, of Teignmouth); Leslie Ashcroft Ellwood, B.A., LL.B. Cantab. (Mr. Harvey Clifton, of London); John Douglas Gale (Mr. John Edward Gale, of the firm of Messrs. Durnford & Gale, of Windsor); Eric Hyman Isaacs, B.A., LL.B. Cantab. (Mr. Reginald Benjamin Simmons Lewis, of the firm of Messrs. Hyman Isaacs, Lewis and Mills, of London); John Ronald Jacques (Mr. Leonard William Liell, of the firm of Messrs. Attwater & Liell, of London); John Mason, LL.B. London (Mr. Albert Edward Timbrell, of the firm of Messrs. Timbrell & Baker, of London); William Joseph Panter (Mr. Hugh Neville Williams (deceased) and Mr. John Penrhyn Clews, both of the firm of Messrs. Williams & Williams, of Rhyl); John Purcell Peacock, B.A. Oxon. (Mr. John Whitaker Littlewood, of the firms of Messrs. Littlewood & Peace, of Wellington, Salop; and Messrs. Burton, Yeates & Hart, of London); Edgar Lewis Pilditch, B.A. Oxon. (Sir Bernard Edward Halsey Bircham, K.C.V.O., of the firm of Messrs. Bircham & Co., of London); Edward Gervase Raynes, B.A., LL.B. Cantab. (Mr. Thomas Arnold Kirkham, B.A., of the firm of Messrs. Torr & Co., of London); Frank Percival Risdon (Mr. Frank Risdon, of the firms of Messrs. Joyce, Risdon & Hosegood, of Williton; and Messrs. Rawle, Johnstone & Co., of London); William Alexander Seaton, B.A. Oxon. (Mr. Edgar Robson Tanner, M.A., LL.M., of the firms of Messrs. Tanner & Clarke, of Bristol; and Messrs. Hancock & Willis, of London); Ivor Torrance Smith (Mr. Thomas Cleghorn Smith, of Berwick-upon-Tweed); Thomas Jennings Urwin (Mr. Wilfrid Thomas Hayward, of the firm of Messrs. Hayward, Hayward & Berry, of West Hartlepool); Geoffrey Hugh Walford, B.A. Cantab. (Mr. Hugh Selwyn Walford, B.A., of the firm of Messrs. Walfords; and Mr. Beresford Rimington Heaton, B.A., J.P., of the firm of Messrs. Rider, Heaton, Meredith & Mills, both of London); Alan Mills Welsford, B.A. Oxon. (Mr. Harold George Brown, M.A., LL.B., of the firm of Messrs. Linklaters & Paines, of London); David Sydney Woolf (Mr. Louis Sydney Woolf, of the firm of Messrs. B. A. Woolf & Co., of London); Ernest Wurzal (Mr. Joseph Wurzal, LL.B., of Leeds).

The Council of The Law Society have accordingly given a Class Certificate and awarded the following prizes:—

To Mr. Benjamin and Mr. Prentice—Each The Clement's Inn Prize, value about £42.

To Mr. Pugh—The Daniel Reardon Prize, value about £21.

To Miss Weston—The Clifford's Inn Prize, value £5 5s.

To Mr. Davies—The New Inn Prize, value £5 5s.

To Mr. Coomber—The Law Society's Prize, value £5 5s.

The Council have given Class Certificates to the candidates in the Second and Third Classes.

Eighty-one candidates gave notice for examination.

PRELIMINARY EXAMINATION

The following Candidates (whose names are in alphabetical order) were successful at the Preliminary Examination, held on the 7th and 8th July, 1926:—

Bland, Geoffrey; Brentnall, Paul; Bright, Pennington Mellor; Brightmore, Anthony George Patrick; Brown, John Wain; Burnett, Auboné; Calder, Robert Stirling Muirhead; Clark, Edward Forrester; Clark, Felix Francis Gordon; Clark, Francis Robert Earle; Davis, Leslie Richard; de Walton-Reade, Philip Isaac John Chorley; Durie, Kenneth Robert Daniel; Field, Maurice Wylner; Fright, Charles John; Gaunt, Arthur Geoffrey; Hales, Leonard Gordon; Harding, John Grosvenor Laurance; Harris, Edward Rhodri; Harris, Mark Allen; Hinchliffe, Edwin Rigby; Horden, Frederick Ronald; Horne, Stanley; Ingham, Lucian Donovan; Inkpen, Leslie Arthur; Kemp, Douglas Gordon;

Kewish, John Douglas; Kirk, Charles William Goodwin Trinder; McAnulty, James Shorrock; Marsh, Leonard; Maston, Ernest Clabour; Mayo, Richard Geoffrey; Moon, Arthur Neville; Owens, Richard Hugh; Parris, Francis Miller; Pease, John Stockwell; Preston, Robert; Ram, William Francis Willett; Smith, Frank Eyre; Stevenson, Maurice Rawson; Telford, John Leighton; Thornton, Alfred Henry; Tolhurst, John; Trenholme, Kenneth Marshall; Trentham, John Austin; Whittaker, John Arthur; Williams, Edward Vaughan; Williams, John Alister Seymour.

No. of Candidates, 94. Passed, 48.

Legal Notes and News.

Appointments.

Mr. SYDNEY R. FIELD, B.A. (Oxon.), solicitor, of the firm of Messrs. Field & Sons, 42, Warwick-street, Leamington, has been appointed Clerk of the Peace and Clerk to the County Council of Warwickshire in succession to his father, the late Mr. Edward Field, B.A., who died on the 3rd June last. Mr. Field, who was admitted in 1908, was formerly the Deputy-Clerk, whilst his grandfather, Mr. Algernon Sydney Field, was appointed Clerk of the Peace for the County in 1874.

Mr. JAMES C. BARBER, solicitor, chief assistant to Mr. H. H. Battle, Town Clerk of Stafford, has been appointed Assistant Solicitor in the office of the Town Clerk of Halifax, to fill the vacancy caused by the appointment of Mr. W. H. Bentley as Deputy Town Clerk of Reading. Mr. Barber was admitted in 1925.

Mr. WILLIAM HENRY BENTLEY, assistant solicitor in the office of Mr. Percy Saunders, Town Clerk of Halifax, has been appointed Deputy Town Clerk of Reading, in succession to Mr. J. L. Percival, solicitor, recently appointed Town Clerk of Rochester. Mr. Bentley was admitted in 1922.

Mr. B. C. ROE, assistant solicitor in the office of Mr. Cecil Oakes, LL.M., Clerk to the East Suffolk County Council, has been appointed Legal Assistant in the office of Mr. F. C. Crowte, Solicitor, Clerk of the Peace and Clerk of the Salop County Council. Mr. Roe was admitted in 1925.

Wills and Bequests.

Mr. Edward Caddick, solicitor, of Dorset House, Wellington-road, Edgbaston, Birmingham, who died on 26th March, aged ninety-one, left estate of the value of £33,558, with net personalty £30,485. He left: £200 to Lodge-road Unitarian Church, West Bromwich; and £200 and £78 per annum each to his maid Mary Stokes and his maid Clara Knight, if respectively in his service at his death, "in recognition of long and faithful service."

Mr. Henry John Tiddeman (fifty-six), solicitor, of Beaconsfield-road, St. Margaret's, Twickenham, Middlesex, and of Lincoln's Inn-fields, W.C., left estate of the gross value of £1,394.

Lieutenant-Colonel Thomas Horwood, V.D. (seventy-four), of Walton Warren, Aylesbury, formerly of the firm of Horwood and James, solicitors, left unsettled estate of the gross value of £37,171.

Mr. Francis George Morris, solicitor, of Shrewsbury, and of Upton Magna, near Shrewsbury, left estate of the gross value of £6,031.

Mr. John Davies, solicitor's clerk, of King Richard-street, Coventry, left estate of the gross value of £5,015.

UNOPPOSED BILLS.

The Unopposed Bills Committee of the House of Commons on the 21st inst. passed for third reading a number of Bills, many of them being to confirm provisional orders granted by the Minister of Health to various local authorities.

Among these were the Bills for the extension of the Borough of Ealing by the inclusion of the urban districts of Hanwell and Greenford; for the inclusion in the Borough of Watford of 600 acres from the rural district; and the inclusion in the Borough of Ashton-under-Lyne of the urban district of Hurst.

Other measures dealt with were that empowering the Harpenden Water Company, Limited, to construct further works in order to supply Wheathampstead, the Newcastle and Gateshead Corporations' Bill in regard to their bridge across the Tyne, and the General Powers Bill of the Manchester Ship Canal Company.

UNPROTESTED BILLS.

Before the Anglo-German Mixed Arbitral Tribunal, sitting in London, the Chartered Bank of India, Australia and China, whose head office is in London, failed to recover the sum of £318 15s., with interest thereon at 8 per cent. per annum, representing a deficiency on six bills of exchange drawn by Werdt and Co., and discounted by them with the creditors' Hong-kong branch before the war.

The debtor, Mr. F. W. A. Melchers, a German national resident in Germany, was a partner with another German national of the firm of Werdt and Co., which carried on business at Hong-kong before the war. Two of the bills were drawn in sterling on the Dresdner Bank, and, on their arrival at the London branch of that bank after 4th August, 1914, were dishonoured by non-acceptance. The other four bills were drawn in marks on S. R. Levy and Co., of Hamburg, and these also arrived in London after the outbreak of the war, and so could not be presented. All the bills were noted but not protested.

The Tribunal, in their judgment, said it was common ground that English law was to be applied. Under English law when a foreign bill appearing on the face of it to be such had been dishonoured by non-acceptance or non-payment, it must be duly protested for non-acceptance or for non-payment. If it be not so protested, the drawer and indorsers were discharged (Bills of Exchange Act, 1882, s. 51 (2)). Any bill which was not, or on the face of it did not purport to be both drawn and payable within the British Isles, or drawn within the British Isles upon some person resident therein, was a foreign bill (Bills of Exchange Act, 1882, s. 4 (1)). Art. 301 of the Treaty of Versailles and agreements between the Governments thereunder had extended the period during which the bills should have been protested, but these bills had not been protested. In the present case, unlike *The Standard Bank of South Africa* v. *Hecht*, the creditors could rely only on the bills. They were unable to base their claim on a letter of hypothecation. In the opinion of the Tribunal, therefore, the claim must fail.

COSTUME OF FREE STATE JUDGES.

In the Free State Senate, during a debate on the new Rules of Court, Mr. W. B. Yeats moved that the rules dealing with the costume of the Bench and Bar should not be approved. He did not want the judges, he said, to wear ordinary dress in court, but he believed that the Government had in its possession very much finer designs than those which had been handed down by historic accident. No country of which he knew after a revolution had been content to adopt the traditions of the past without examination. The Irish people should realize that the law was of their own making, and any external change to mark that fact would be useful.

The Minister for Justice (Mr. Kevin O'Higgins) said that no question of national sentiment or even of principle was involved. The judge in mufti was an anomaly which he did not care to contemplate, and the Free State was one of the last countries in the world in which a Government could afford to dispense with the ceremonial of the law. The members of the Bench and Bar themselves had voted for the present costumes, and they ought to be considered.

Mr. Yeats's motion was defeated by thirteen votes to twelve.

The dress prescribed for judges of the Supreme and High Courts by the new Rules of Court is as follows: A black coat and vest of uniform make and material, of the kind heretofore worn by senior counsel. A black Irish poplin gown of uniform make and material. White bands as heretofore worn. A wig such as has heretofore been worn by the judges of the Supreme Court in Ireland, of the kind known as the small or bobbed wig. The rule also directs that counsel shall appear "habited in a dark colour and in such robes and bands and with such wigs as have heretofore been worn."

SCOTTISH BARONET'S DOMICILE.

Judgment was given in the First Division of the Court of Session, Edinburgh, on Tuesday, the 20th inst., in the appeal against the decision of Lord Morison on the preliminary question of jurisdiction in the defended suit of divorce brought by Lady Ross against Sir Charles Ross, Bt. The respondent, besides denying the charges of misconduct, pleaded that the Scottish Courts had no jurisdiction, as he had abandoned his Scottish domicile and acquired an American domicile. Lord Morison found that the respondent's domicile was in New York, and accordingly dismissed the action. The First Division recalled that judgment on the ground that the respondent's domicile was Scottish and that the Court of Session had jurisdiction to try the action, which was remitted back to Lord Morison to proceed.

STRIKERS AND POOR-LAW RELIEF.

The question of enforcing repayment of poor-law relief granted to persons engaged in strikes, was considered on the 21st inst. at a meeting of the Lambeth Board of Guardians, and, as an expression of sympathy, it was agreed to make a monetary grant to Pontypridd Union, which is now engaged in litigation on the matter, to meet the expenses incurred. It was stated that Pontypridd Union had taken legal proceedings to recover payment of relief advanced to strikers. The case was first brought in the county court, and was decided against the guardians, but that decision was subsequently reversed by the High Court. The matter was then taken to the Court of Appeal, which reversed the decision of the High Court. The Lambeth Guardians considered that it was essential that the matter should be fought to the end.

AGENTS' UNEXPLAINED ACT.

Darmstadter and Nationalbank, a kommandit-gesellschaft established under German law, before the First Division of the Anglo-German Mixed Arbitral Tribunal, succeeded in their claim against Lansdale Midgley & Co., of Hull, under Article 296 of the Treaty of Versailles, for the sterling equivalent of certain sums of money, together with interest thereon, paid away by the bank on account of the English debtors before the war.

It appeared that before the war Messrs. Lansdale Midgley and Co. made an arrangement whereby the creditor bank should finance their purchases of eggs in various towns in Poland, Galicia and Russia. The creditor bank made the necessary payments through the Russo-Asiatic Bank to the sellers of the eggs, sending the documents to the National Provincial Bank at Hull, where they were handed over to the debtors against payment. In July, 1914, the creditor bank, through the Russo-Asiatic Bank, paid 8,000 roubles to the sellers of eggs purchased by the debtors in Veronesh, and the consignment was sent to Messrs. Gerhard & Hey, forwarding agents, at Riga, with instructions to forward to Messrs. Lansdale Midgley & Co., Hull. The debtors themselves telegraphed to the forwarding agents to forward the goods by rail from Riga to Archangel, and thence ship them to England, and an acknowledgment was received by the debtors. Messrs. Gerhard & Hey, however, in circumstances not explained, sold the eggs in Riga, realizing 2,234.40 roubles after the deduction of their expenses, and this sum they credited to the creditors, who in turn credited it to the debtors—suing for the balance under the terms of the Treaty.

The Tribunal, in their judgment, said that as between the creditors and the debtors the transaction was one of loan against security, and on the outbreak of war, under Article 299, the contract was dissolved and the amount of the loan became repayable. After receiving the debtors' instructions, Messrs. Gerhard & Hey were acting as agents of the debtors and not of the creditors, and the Tribunal were not satisfied that the creditors interfered further in the transaction. It might well be that Messrs. Gerhard & Hey were under a liability towards the debtors for having failed to comply with their instructions, but as to this the Tribunal expressed no opinion, the question not arising in the present case.

NO TAXATION OF CATS.

Mr. Churchill, in a written reply to a question by Mr. Day, says that he will not consider legislation with a view to the taxation of cats.

THE WORKING OF THE RATING AND VALUATION ACT, 1925.

Speaking recently at Huntingdon, in connexion with the Beds, Herts, Hunts and Middlesex branch of the Auctioneers' and Estate Agents' Institute, Sir Trustram Eve, in giving an explanation of this Act, said it was highly important that rating authorities should get to work at once and not wait for the appointed day (1st April, 1927). The whole principle of English law was that people should be taxed equally, according to their ability to pay and the benefits received. Unless all properties within a rating area were inspected and valued by one mind, equality was impossible, and in his experience the only method of valuation was by measurement, if equality was to be attained. It was of enormous importance that all new valuation lists for England and Wales, covering some 10,000,000 hereditaments, should be first measured and valued so that all grounds of unfairness might be avoided. Sir Trustram Eve said that he had opposed this Bill strenuously for various reasons. Now that it was an Act of Parliament, it was their duty to make it work as well as they could. He was sure, however, that it was no improvement on the old law, and that the country could not afford the expense it would entail.

BRITISH PATENTS IN IRISH FREE STATE.

The executive council of the Institute of Patentees have considered the position of British patentees in the Irish Free State. Recently, Mr. Justice Meredith in a Free State Court, decided that Letters Patent under the seal of the British Patent Office could not confer privileges in the Irish Free State. The executive council of the Institute of Patentees have now decided that, as the case was *sub judice*, no immediate action should be taken. They passed, however, the following resolution: "That in the event of the appeal not being upheld or the Irish Free State Parliament not giving facilities for the rapid passage of the proposed Bill, a deputation wait upon the British Government with a view to urging them to bring pressure to bear upon the Irish Free State Government to legalize the position of British patents in the Free State and furthermore to approach the Irish Free State Government direct on the subject in view of the number of members situated in the Free State who are holders of British patents."

TRADING WITH NORTHERN IRELAND.

The Ulster Publicity Branch of the Ministry of Commerce of Northern Ireland, in a statement just issued, point out that the import duties of Southern Ireland in no way affect goods sent direct from Great Britain to Northern Ireland or from oversea to Northern Ireland ports. Under the Act of 1920, by which the Government of Northern Ireland was established, the administration of the Customs and Excise Services was reserved to the Imperial Government. The British duties and procedure apply in every detail to Northern Ireland, which, being within the British Customs Union, is in the same position for trading purposes as any district of England, Scotland, or Wales.

The latest available statistics show that the average annual value of the seaborne imports of Northern Ireland is in the region of £58,911,000, and the average annual value of exports is approximately £57,801,000. As both of these come under the British Customs Union returns they necessarily form part of the entire trade of Great Britain and Northern Ireland.

SALE OF POISONS.

The Lord President of the Council has appointed a committee to consider and report whether any modifications are necessary or desirable in the Poisons and Pharmacy Acts.

The committee will consist of: Mr. E. A. Mitchell-Innes, K.C. (chairman); Mr. L. G. Brock; Sir Malcolm Delevingne; Mr. F. W. Gamble; Sir William M. Graham-Harrison; Sir Donald MacAlister, Bt., M.D.; Mr. E. T. Neathercoat; Mr. Colin Smith; Mr. G. Stubbs; Sir William H. Willcox, M.D.; and Mr. A. E. Young.

The matters to be considered are:—

1. In regard to the conditions relating to the sale of poisons.
2. In regard to the procedure for the modification or extension of the schedule of poisons to which the Acts apply.
3. In the system of making and enforcing regulations in regard to the keeping, selling and dispensing of poisons.
4. In regard to the central authority for the purposes of the Acts; and
5. In regard to any other matters to which the attention of the committee may be drawn.

The secretaries to the committee are Mr. M. D. Perrins, Home Office, Whitehall, and Dr. E. W. Adams, Ministry of Health, Whitehall, to the first of whom all communications should be addressed.

DOCK DEFENCES AND BAR ETIQUETTE.

At the Central Criminal Court on Tuesday, the 20th inst., the Recorder (Sir Ernest Wild, K.C.) addressing Sir Travers Humphreys and Mr. Percival Clarke, the Senior Counsel for the Treasury, said there was a matter on which he wished to have the assistance of the Central Criminal Court Bar Mess. The question was with regard to dock defences. He had always understood that every member of the Junior Bar present—even the Treasury Counsel—was bound to take a dock defence if asked. He had noticed of late that there had been a practice of some members of the Bar, when a prisoner was asking for a dock defence, removing their wigs, thereby signifying that they did not desire to take a dock defence. That was contrary to the practice he had known for twenty-three years. His own private view was that members of the Bar, having the right of audience, it would be a very great pity, and it would not be in accordance with the traditions of the profession, to pursue that practice, and he therefore respectfully suggested that the matter might engage the attention of the Bar Mess, who might bring it before the Bar Council.

Sir Travers Humphreys, in reply, said the Recorder's view would be brought before a special meeting of the Bar Mess which would be convened for the purpose.

The Recorder pointed out that Sir Travers Humphreys had recently been selected by a prisoner to defend him in a dock brief, and he had not removed his wig, and added that he regarded the removal of a wig as a discourtesy to the court.

AMERICAN CLAIMS AGAINST FOOD DEPARTMENT.

Replying to a question by Sir Arthur Holbrook, M.P., Sir Burton Chadwick (Parliamentary Secretary, Board of Trade) states that the amount of the outstanding claims made by the American packers against the Food Department is £2,100,000. One of the claims came before an arbitrator, who gave his final award by September. The claimants unsuccessfully appealed to the Court of Appeal in March. The time for appeal to the House of Lords has not yet expired. Another claim has been settled by negotiation, and the remainder are proceeding before the appropriate tribunal. The approximate cost to date, including law charges, salaries, and accommodation of staff, is £19,000.

Property Mart.

The four freehold licensed houses put up by auction at Winchester House by Messrs. John Lister & Co., on the 21st inst. (as announced in THE SOLICITORS' JOURNAL on the 3rd July), have been successfully disposed of as follows: "The Anchor," Western Road, Tring, £3,400; "The White Lion," Startops End, Tring, £2,175; "The Fish Inn," Mill Street, Berkhampsted, £2,200; and "The Ship," Marsworth, Bucks, £1,120, representing a total of £8,895.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate 5%. Next London Stock Exchange Settlement, Thursday, 12th August, 1926.

	Middle Price 27th July	Interest Yield.	Yield with Redemption.
English Government Securities.		£ s. d.	£ s. d.
Consols 2½%	55⅝	4 10 0	—
War Loan 5% 1929-47	101½	4 19 0	4 19 6
War Loan 4½% 1925-47	95⅝	4 14 6	4 17 6
War Loan 4% (Tax free) 1929-47 ..	100¾	3 19 6	3 19 6
War Loan 3½% 1st March 1928 ..	98¼	3 11 0	4 17 0
Funding 4% Loan 1960-90	86⅜	4 12 6	4 13 6
Victory 4% Bonds (available for Estate Duty at par) Average life 35 years	93⅛	4 5 6	4 8 6
Conversion 4½% Loan 1940-44 ..	96½	4 13 6	4 16 0
Conversion 3½% Loan 1961	76	4 12 0	—
Local Loans 3% Stock 1921 or after	63⅝	4 15 0	—
Bank Stock	256½	4 13 0	—
India 4½% 1950-55	90¾	4 19 0	5 2 6
India 3½%	69¾	5 0 0	—
India 3%	59¾	5 0 0	—
Sudan 4½% 1939-73	92	4 18 0	5 0 0
Sudan 4% 1974	85½	4 13 0	4 17 6
Transvaal Government 3% Guaranteed 1923-53 (Estimated life 19 years) ..	£0½	3 15 0	4 12 6
Colonial Securities.			
Canada 3% 1938	83½	3 12 6	4 19 0
Cape of Good Hope 4% 1916-36 ..	92½	4 7 0	5 1 6
Cape of Good Hope 3½% 1929-49 ..	79	4 9 0	5 2 0
Commonwealth of Australia 5% 1945-75	99½	5 0 6	5 1 0
Gold Coast 4½% 1956	94⅜	4 15 6	4 18 6
Jamaica 4½% 1941-71	92½	4 17 0	4 17 0
Natal 4% 1937	91½	4 7 0	4 19 0
New South Wales 4½% 1935-45 ..	90½	5 0 6	5 5 0
New South Wales 5% 1945-65 ..	98⅜	5 1 0	5 2 6
New Zealand 4½% 1945	95⅞	4 14 0	4 19 6
New Zealand 4% 1929	97	4 3 0	5 1 6
Queensland 3½% 1945	76	4 12 6	5 10 0
South Africa 4% 1943-63	87	4 12 0	4 17 0
S. Australia 3½% 1926-36	85½	4 2 0	5 7 6
Tasmania 3½% 1920-40	83½	4 4 0	5 4 0
Victoria 4% 1940-60	83	4 16 6	5 0 0
W. Australia 4½% 1935-65	90½	5 0 0	5 2 0
Corporation Stocks.			
Birmingham 3% on or after 1947 or at option of Corpn.	62½	4 16 0	—
Bristol 3½% 1925-65	75½	4 13 0	5 0 0
Cardiff 3½% 1935	88	4 0 0	5 2 6
Croydon 3% 1940-60	67⅜	4 9 0	5 1 0
Glasgow 2½% 1925-40	76½	3 6 0	4 16 0
Hull 3½% 1925-40	75	4 13 0	5 0 6
Liverpool 3½% on or after 1942 at option of Corpn.	73¼	4 15 0	—
Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn.	53	4 14 6	—
Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn.	63½	4 15 0	—
Manchester 3% on or after 1941 ..	62½	4 16 6	—
Metropolitan Water Board 3% 'A' 1963-2003	63¼	4 15 0	4 16 0
Metropolitan Water Board 3% 'B' 1934-2003	65	4 12 6	4 15 0
Middlesex C. C. 3½% 1927-47 ..	79	4 8 6	5 0 6
Newcastle 3½% irredeemable ..	71½	4 18 0	—
Nottingham 3% irredeemable.. ..	62½	4 16 0	—
Plymouth 3% 1920-60	67	4 10 0	5 0 6
English Railway Prior Charges.			
Gt. Western Rly. 4% Debenture ..	81	4 19 0	—
Gt. Western Rly. 5% Rent Charge ..	98¾	5 1 0	—
Gt. Western Rly. 5% Preference ..	95½	5 5 0	—
L. North Eastern Rly. 4% Debenture	77½	5 3 0	—
L. North Eastern Rly. 4% Guaranteed	75½	5 6 0	—
L. North Eastern Rly. 4% 1st Preference	66	6 1 0	—
L. Mid. & Scot. Rly. 4% Debenture ..	79	5 1 0	—
L. Mid. & Scot. Rly. 4% Guaranteed	78	5 3 0	—
L. Mid. & Scot. Rly. 4% Preference ..	73	5 9 6	—
Southern Railway 4% Debenture ..	80	5 0 0	—
Southern Railway 5% Guaranteed ..	99½	5 0 6	—
Southern Railway 5% Preference ..	95	5 5 6	—

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